Supreme Court, U.S.
FILED
JUL 24 1997
CLERK

No. 96-1400

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

STATE OF CALIFORNIA,
STATE LANDS COMMISSION,
Petitioners,

v.

DEEP SEA RESEARCH, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX
Volume II, pages 301 to 578

DANIEL E. LUNGREN
Attorney General of the
State of California
RICHARD M. FRANK
Assistant Attorney General
DENNIS M. EAGAN
Deputy Attorney General
JOSEPH C. RUSCONI*
Deputy Attorney General
*Counsel of Record
2101 Webster Street, 12th Floor
Oakland, California 94612-3049
Telephone: (510) 286-4142
Counsel for Petitioners

STUART M. GORDON
FLETCHER C. ALFORD*
*Counsel of Record
GORDON & REES, LLP
20th Floor
Embarcadero Center West
275 Battery Street
San Francisco, CA 94111
Telephone: (415) 986-5900
Counsel for Respondent

(Of counsel on inside cover)

PETITION FOR CERTIORARI FILED MARCH 4, 1997
CERTIORARI GRANTED JUNE 9, 1997

381 pp

Of Counsel for Petitioners:

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue
Suite 100 South
Sacramento, CA 95825-8202

Of Counsel for Respondent:

DAVID J. BEDERMAN
Emory University
School of Law
Gambrell Hall
Atlanta, GA 30322-2770

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NOTICE OF APPEAL

DANIEL E. LUNGREN, Attorney General
of the State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
2101 Webster Street
Oakland, CA 94612-3049
Telephone: (510) 286-4142

JACK RUMP, Chief Counsel
PETER PELKOFER, Senior Counsel
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202
Telephone: (916) 574-1850

Attorneys for Intervenor,
State of California, State Lands Commission

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. The BROTHER JONATHAN, her appurtenances, furniture, cargo, etc., Defendant.	C 91 3899 LCB NOTICE OF APPEAL (Filed Apr. 13, 1995)

STATE OF CALIFORNIA,)
STATE LANDS)
COMMISSION,)
)
Intervenor.)
_____)
)
UNITED STATES)
OF AMERICA,)
)
Intervenor.)
_____)

Notice is hereby given that the State of California, State Lands Commission, Intervenor, in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an order of the District Court, the Honorable Louis C. Bechtle, denying its motion to dismiss for lack [sic] jurisdiction, entered in this action on March 15, 1995.

Dated April 12, 1995

Respectfully submitted,

DANIEL E. LUNGREN,
Attorney General of the
State of California
JAN S. STEVENS,
Assistant Attorney General
JOSEPH C. RUSCONI,
Deputy Attorney General
JACK RUMP, Chief Counsel
PETER PELKOFER,
Senior Counsel
Attorneys for Appellant
State of California
State Land Commission

/s/ Peter Pelkofer
PETER PELKOFER
100 Howe, Suite 100-South
Sacramento, CA 95825-8202

CLAIM OF THE UNITED STATES OF AMERICA AS OWNER OF GOODS AND CARGO

FRANK W. HUNGER
Assistant Attorney General
MICHAEL J. YAMAGUCHI
United States Attorney
PHILIP A. BERNS
Attorney in Charge, West Coast Office
Torts Branch, Civil Division
WARREN A. SCHNEIDER
Assistant Attorney in Charge
U.S. Department of Justice
Torts Branch, Civil Division
P.O. Box 36028
450 Golden Gate Avenue, Room 10-4640
San Francisco, California 94102-3463
Telephone: (415) 556-3141
BARBARA B. O'MALLEY
Special Litigation Counsel
U.S. Department of Justice
Torts Branch, Civil Division
P.O. Box 14271
Washington, D.C. 20044-2471
Telephone: (202) 616-4081

Attorneys for Claimant-Intervenor
United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, tackle, boats, appurtenances, cargo, etc., Defendants. and THE STATE OF CALIFORNIA, STATE LANDS COMMISSION, and the UNITED STATES OF AMERICA, Intervening. Defendants.	No. C91-3899-LCB IN ADMIRALTY CLAIM OF UNITED STATES OF AMERICA AS OWNER OF GOODS AND CARGO

PLEASE TAKE NOTICE that Intervenor, United States of America, without waiving any objections it may have as to the *in rem* jurisdiction of this Court, hereby makes claim as owner of certain goods and cargo carried on board BROTHER JONATHAN at the time of her sinking, including but not limited to, bullion, gold coin or other specie and scrip or other legal tender being transported on BROTHER JONATHAN by employees of Claimant-Intervenor, United States of American, as part

of their official duties. The amount and nature of said goods and cargo have not presently been fully ascertained, but the same are as asserted to have been arrested by plaintiff, Deep Sea Research, Inc., pursuant to order of this Court. Claimant-Intervenor, United States of America, states it was at the time of the sinking of BROTHER JONATHAN, and the filing of the complaint herein, and still is, the true and bona fide sole owner of said goods and cargo, that no other person is the owner thereof and that title and ownership interest in said goods and cargo have never been abandoned by Claimant-Intervenor, United States of America.

WHEREFORE, it prays to defend accordingly.

Dated: June 9, 1995

FRANK W. HUNGER
Assistant Attorney General
MICHAEL J. YAMAGUCHI
United States Attorney
PHILIP A. BERNS
Attorney in Charge, WCO
Torts Branch, Civil Division

/s/ Warren A. Schneider
WARREN A. SCHNEIDER
Assistant Attorney in Charge
U.S. Department of Justice
Torts Branch, Civil Division
BARBARA B. O'MALLEY
Special Litigation Counsel
U.S. Department of Justice
Torts Branch, Civil Division

Attorneys for Defendant
United States of America

I, Warren A. Schneider, am the Assistant Attorney in Charge, West Coast Office, Torts Branch, Civil Division, U.S. Department of Justice and one of the attorneys for Claimant-Intervenor, United States of America, in this matter. I have read the claim and know the contents thereof, and the same is true and correct based on information officially furnished to me.

Subscribed to under penalty of perjury pursuant to 28 U.S.C. § 1746 this 9th day of June, 1995 at San Francisco, California.

/s/ Warren A. Schneider
WARREN A. SCHNEIDER

ANSWER OF CLAIMANT-INTERVENOR UNITED STATES OF AMERICA TO THE COMPLAINT

FRANK W. HUNGER
Assistant Attorney General
MICHAEL J. YAMAGUCHI
United States Attorney
PHILIP A. BERNS
Attorney in Charge, West Coast Office
Torts Branch, Civil Division
WARREN A. SCHNEIDER
Assistant Attorney in Charge
U.S. Department of Justice
Torts Branch, Civil Division
P.O. Box 36028
450 Golden Gate Avenue, Room 10-4640
San Francisco, California 94102-3463
Telephone: (415) 556-3141
BARBARA B. O'MALLEY
Special Litigation Counsel
U.S. Department of Justice
Torts Branch, Civil Division
P.O. Box 14271
Washington, D.C. 20044-2471
Telephone: (202) 616-4081

Attorneys for Claimant-Intervenor
United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, tackle, boats, appurtenances, cargo, etc., Defendants. and THE STATE OF CALIFORNIA, STATE LANDS COMMISSION, and the UNITED STATES OF AMERICA, Intervening Defendants.	No. C91-3899-LCB IN ADMIRALTY ANSWER OF CLAIMANT-INTERVENOR UNITED STATES OF AMERICA TO THE COMPLAINT

The answer of claimant-intervenor, United States of America, to the complaint of plaintiff, Deep Sea Research, Inc., shows upon information and belief, as follows:

1. The allegations of paragraph 1 are allegations of law to which this answering claimant need not respond; to the extent response is deemed necessary, however, denies that plaintiff has any rights to, nor is entitled to

any award for, any goods or cargo on board BROTHER JONATHAN as to which claimant, United States of America, is the sole bona fide owner.

2. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 2.

3. Denies knowledge or information as to the allegations of paragraph 3, except admits that plaintiff has alleged an action *in rem* against BROTHER JONATHAN, her appurtenances, furniture and cargo as defendant, and that said vessel sank while transporting cargo and passengers in navigable waters of the Pacific Ocean in 1865 and denies that any goods or cargo on board said vessel owned by claimant-intervenor, United States of America, are lost or have ever been abandoned by the United States.

4. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 4.

5. Admits the allegations of paragraph 5, except denies knowledge or information sufficient to form a belief as to the allegation that the sinking occurred approximately four and one-half miles off the coast of Crescent City, California.

6. The allegations of paragraph 6 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board said vessel owned by claimant-intervenor, United States of America, are lost or have ever been abandoned by the United States.

7. Denies each and every allegation of paragraph 7.

8. The allegations of paragraph 8 are allegations of law to which this answering claimant need not respond;

to the extent a response is deemed necessary, however, denies that this Court has obtained *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

9. Denies knowledge or information as to the allegations of paragraph 9, except asserts that the allegation that corporations as the owners of vessels may maintain a salvage action is an allegation of law to which this answering claimant need not respond; to the extent, however, that an answer to that allegation is deemed necessary, denies that plaintiff is entitled to a salvage award.

10. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 10, except admits that BROTHER JONATHAN sank while transporting cargo and passengers in navigable waters of the Pacific Ocean in 1865 and denies that any goods or cargo on board said vessel owned by claimant-intervenor, United States of America, are lost or have ever been abandoned by the United States.

11. The allegations of paragraph 11 are allegations of law to which this answering claimant need not respond; to the extent response is deemed necessary, however, denies knowledge or information sufficient to form a belief as to the allegations of paragraph 11.

12. Admits the allegations of paragraph 12, except denies knowledge or information sufficient to form a belief as to the allegation that the sinking occurred approximately four and one-half miles off the coast of Crescent City, California.

13. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 13.

14. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 15.

16. The allegations of paragraph 16 are allegations of law to which this answering claimant need not respond; to the extent response is deemed necessary, however, denies knowledge or information sufficient to form a belief as to the allegations of paragraph 16, except denies that the goods or cargo on board BROTHER JONATHAN owned by claimant-intervenor, United States of America, are lost or have ever been abandoned by claimant, United States of America, and denies that this Court has *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

17. In answer to paragraph 17, denies that this Court has *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

18. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 18 as to plaintiff's intent or proposed future actions.

19. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 19 concerning future actions or the obtaining by this Court of *in rem* jurisdiction on some future date.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

20. In answer to paragraph 20, repeats and reasserts each and every paragraph of this answer as if set forth at length hereat.

21. In response to paragraph 21, denies that plaintiff is entitled to the relief sought therein as to any goods or cargo on board BROTHER JONATHAN as to which claimant, United States of America, is the sole bona fide owner and denies that this Court has *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

22. In response to paragraph 22, denies that plaintiff is entitled to a salvage award or can obtain title to any goods or cargo on board BROTHER JONATHAN as to which claimant, United States of America, is the sole bona fide owner, and denies that this Court has *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

23. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 23.

24. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 24.

25. Denies the allegations of paragraph 25.

26. The allegations of paragraph 26 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies the allegations of paragraph 26.

27. Denies the allegations of paragraph 27.

28. The allegations of paragraph 28 are allegations of law to which this answering claimant need not

respond; to the extent a response is deemed necessary, however, denies the allegations of paragraph 28.

29. The allegations of paragraph 29 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN owned by claimant-intervenor, United States of America, are lost or have ever been abandoned by the United States.

30. Denies the allegations of paragraph 30 insofar as they apply to any goods or cargo on board BROTHER JONATHAN owned by claimant-intervenor, United States of America.

31. The allegations of paragraph 31 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that this Court has *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

32. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 32.

33. The allegations of paragraph 33 are allegations of law to which this answering claimant need not respond; to the extent, however, that a response is deemed necessary, denies knowledge or information sufficient to form a belief as to the allegations of paragraph 33.

34. Denies the allegations of paragraph 34.

35. The allegations of paragraph 35 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary,

however, denies that plaintiff is entitled to a salvage award.

36. The allegations of paragraph 36 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that plaintiff is entitled to a salvage award.

37. The allegations of paragraph 37 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that plaintiff is entitled to a salvage award.

38. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 38.

39. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 39, except denies that plaintiff is entitled to a salvage award or is entitled to sell or auction any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner.

40. Denies that plaintiff is entitled to any of the relief sought in paragraph 40.

41. The allegation of paragraph 41 is an allegation of law to which this claimant need not respond.

42. The allegations of paragraph 42 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States.

43. The allegations of paragraph 43 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States.

44. The allegations of paragraph 44 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

45. The allegations of paragraph 45 are allegations of law to which this answering claimant need not respond.

46. The allegations of paragraph 46 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States.

47. The allegations of paragraph 47 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or

that plaintiff has a right to title to any said goods or cargo.

48. The allegations of paragraph 48 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

49. The allegations of paragraph 49 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

50. The allegations of paragraph 50 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

51. The allegations of paragraph 51 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board

BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

52. The allegations of paragraph 52 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

53. The allegations of paragraph 53 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

54. The allegations of paragraph 54 are allegations of law to which this answering claimant need not respond; to the extent a response is deemed necessary, however, denies that any goods or cargo on board BROTHER JONATHAN as to which claimant-intervenor, United States of America, is the sole bona fide owner, have ever been abandoned by the United States or that plaintiff has a right to title to any said goods or cargo.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

55. In response to paragraph 55, repeats and reasserts each and every paragraph of this answer as if set forth at length hereat.

56. Denies the allegations of paragraph 56.

57. Denies the allegations of paragraph 57 and denies that this Court has *in rem* jurisdiction over BROTHER JONATHAN, her appurtenances, furniture and cargo.

AS AND FOR A FIRST AFFIRMATIVE AND COMPLETE DEFENSE

58. Plaintiff has failed to state a cause of action upon which relief can be granted against claimant-intervenor, United States of America.

AS AND FOR A SECOND AFFIRMATIVE AND PARTIAL DEFENSE

59. The law of finds does not apply to any goods or cargo aboard BROTHER JONATHAN owned by claimant-intervenor, United States of America.

WHEREFORE, claimant-intervenor, United States of America, prays that this action be dismissed with costs taxed in favor of claimant-intervenor, United States of America, and that, to the extent this Court may have or obtain *in rem* jurisdiction over the goods or cargo as to which claimant-intervenor, United States of America, is the sole bona fide owner, that this Court order that said goods and cargo be returned to the possession of claimant-intervenor, United States of America, and for

such other and further relief as this Court may deem just and proper.

Dated: June 12, 1995

FRANK W. HUNGER
Assistant Attorney General
MICHAEL J. YAMAGUCHI
United States Attorney
PHILIP A. BERNS
Attorney in Charge, WCO
Torts Branch, Civil Division

/s/ Warren A. Schneider
WARREN A. SCHNEIDER
Assistant Attorney in Charge
U.S. Department of Justice
Torts Branch, Civil Division
BARBARA B. O'MALLEY
Special Litigation Counsel
U.S. Department of Justice
Torts Branch, Civil Division

Attorneys for Defendant
United States of America

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 19, 1995, I served by first-class mail, postage prepaid, a copy of the foregoing Answer of Claimant-Intervenor United States of America To the Complaint to the following:

Stuart M. Gordon, Esq.
Fletcher C. Alford, Esq.
Gordon & Rees
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111

Attorneys for Plaintiff
Deep Sea Research, Inc.

Peter Pelkofer, Esq.
State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

Attorneys for Intervening Defendant
State Lands Commission

Joseph C. Rusconi, Esq.
Deputy Attorney General
State of California
Department of Justice
Attorney General's Office
2101 Webster Street
Oakland, California 94612-3049

Attorneys for Intervening Defendant
The State of California

/s/ Bonnie LI
BONNIE LI

DECLARATION OF JAMES R. REEDY, JR. IN SUPPORT OF OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC.,

Plaintiff,

v.

THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc.,

Defendant.

STATE OF CALIFORNIA, STATE LANDS COMMISSION,

Intervenor.

No. C 91 3899 LCB

DECLARATION OF JAMES R. REEDY, JR. IN SUPPORT OF DEEP SEA RESEARCH, INC.'S OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

ACCOMPANYING PAPERS: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR STAY; DECLARATION OF HARVEY HARRINGTON; DECLARATION OF STEVE LAWSON; and DECLARATION OF DAVID L. FLOHR

GOVERNMENT OF THE UNITED STATES OF AMERICA,

Intervenor.

Date: None
Judge: The Honorable Louis C. Bechtle
(Filed June 28, 1995)

I, JAMES R. REEDY, JR., declare:

1. I am a nautical archaeologist, and am the director of R2 Underwater Consultants, Inc.

2. I have personal knowledge of the matters stated in this declaration, and could competently testify thereto if called as a witness.

3. Attached hereto as Exhibit "A" is a true and correct copy of my résumé.

4. Attached hereto as Exhibit "B" is a true and correct copy of a Preliminary Research Design Plan I prepared for recovery of cultural material from the shipwreck of the *Brother Jonathan*. The plan was created by me after reviewing the available historic data regarding the *Brother Jonathan*, as well as extensive videotapes and photographs taken of the wreck site to date. Although the plan is preliminary in nature and may be subject to slight change as on-site conditions warrant, I believe the plan ensures adequate protection of any historic and archaeologic values at the wreck site during salvage operations.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 27, 1995

/s/ James R. Reedy, Jr.
JAMES R. REEDY, JR.

EXHIBIT A

JAMES R. REEDY, JR.
P.O. Box 1956
Morehead City, NC 28557
(919) 247-6744

CAREER OBJECTIVE

A supervisory position in the field of nautical archaeology which will utilize my:

–experience in underwater archaeology
–knowledge of naval and maritime history
–writing and research skills

EDUCATION

Master of Arts, Maritime History and Underwater Research. East Carolina University, Greenville, North Carolina, 1987. Concentration in nautical archaeology with preparation in administrative writing and museology.

Bachelor of Arts, Anthropology/Archaeology. East Carolina University, 1980. Concentration in archaeology, history minor.

Scholastic Honors and Awards

Dean's List/Honor Roll, ECU	1979-1980
Research Fellow, ECU	1981-1982
Murray Scholar, ECU	1981-1982
Phi Kappa Phi Honor Society	1981-1983

EXPERIENCE SUMMARY

Twenty years in archaeological activities, emphasis on nautical archaeology, remote sensing, ethnohistorical research, underwater area surveys, site excavation and mapping, records management.

Twenty-three years in industrial/recreational diving and diver training. Extensive experience with standard scuba gear, Kirby-Morgan band mask (scuba and surface supplied), AGA Divator (scuba and surface supplied), and Kirby-Morgan Superlite 17 and 17A helmets (surface supplied). Experience in decompression diving and recompression chamber operation.

Underwater expertise in light salvage, pipe and cable installation, u/w construction, search and recovery, bottom surveys, hull inspection and repair. Extensive experience in low visibility and strong currents. Experience in piloting, navigation and electronic (LORAN) positioning, thirty years operation of Class II and III small craft.

Underwater Archaeological Survey – experience in survey procedures, remote sensing, research, examination and identification of submerged structures, equipment maintenance, records management, and supervision of survey personnel.

Underwater Excavation and Mapping – responsible for testing and full-scale excavations for determination

of orientation and extent of buried submerged structural remains and debris scatter. Experience in mapping by surface triangulation, underwater bearing circle, underwater baseline triangulation, and Cartesian coordinates. Proficiency in design, construction and operation of airlifts (2-8 inch), water induction dredges and high pressure water jets for use on mud, sand, silt and decomposed organic bottom. Experience with all types underwater hand tools.

Artifact Conservation – conservationist and manager for collection of over 2000 artifacts from late-18th century submerged site; interim director of 4500 sq. ft. conservation laboratory with over 6800 artifacts from early 18th-century submerged site.

Administrative Skills – experience in personnel management, permitting procedures, records management, environmental impact analysis, liason [sic], and reporting.

Archival Research and Records Management – performed in depth examinations of primary source material on 18th and 19th century maritime activities along U.S. eastern seaboard.

Organized, analyzed and cataloged primary research material in unprocessed manuscript collections; indexed and abstracted contents, composed finding aids, wrote reviews for collection registers.

Compiled and maintained field records for exploration and recovery of materials from several 18th and 19th century sites.

Responsible for all work and research records, notes, special project records and other scientific registers in a biological service laboratory over a ten year period.

Professional Writing and Presentations – permit and grant applications, project reports, site descriptions, photo presentations and lectures, scripting and co-production of video productions.

Ethnohistorical Research – initiated, planned and conducted collection and synthesis of ethnological, historical, and geographic data on underwater survey areas prior to commencement of field operations. Charted locations of possible archaeological targets and integrated investigations into survey schedule. Conducted archival research and key informant interviews, and performed classification, analysis and interpretation of data.

SPECIALIZED SKILLS

Naval and Maritime Research Nautical Archaeology
Computer Operation (LOTUS 1-2-3, PC-Write, Autosketch)
Operation of self-contained and surface-supplied diving systems
Operation of Class II and III small craft

CERTIFICATIONS AND AFFILIATIONS

Society for Historical Archaeology
National Maritime Historical Society
The Explorers Club
Professional Association of Diving Instructors (#941-OWSI)

EMPLOYMENT HISTORY

1/90-present Director, R2 Underwater Consultants, Morehead City, NC. Contract archaeology and maritime research.
*Contract survey and excavation of submerged cultural resource sites
*Contract historical research projects
*Associate Curator of Maritime Research, North Carolina Maritime Museum
*Advise public and private concerns on research, search, and recovery techniques

6/86-10/89 Field Director and Project Archaeologist, Maritime Explorations, Inc., South Chatham, Massachusetts.
*Administrated offshore testing, excavation, and recovery operations on early 18th century submerged site
*Developed and implemented improved field techniques, testing procedures, and recovery systems
*Interim manager of 4500 sq. ft. conservation laboratory
*Directed field operations aboard 70-foot and 166-foot recovery vessels, supervised crews of up to 25 persons

4/85-6/86 Contract consultant, nautical archaeology and commercial diving, Morehead City, NC.
*Consultant in nautical archaeology and maritime history for local and regional organizations
*Contract historical research projects
*Provided contract labor for marine construction and cable companies
*Contracted general underwater work for local maritime industries

8/84-4/85 Archaeological representative, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware.
*Monitored activities of private firm salvaging 18th century British warship
*Compiled and maintained inventory of over 2000 artifacts
*Performed preliminary conservation, cleaning and identification of recovered material
*Functioned as liason [sic] between salvage firm and State

9/82-8/84 Contract consultant, nautical archaeology and commercial diving, Morehead City, NC.
*Researched and identified steamers Quinnebaug (1865) and vessels and other unidentified submerged sites

6/80-8/82 East Carolina University, Greenville, NC

6-7/80 Graduate Assistant, ECU Underwater Archaeology Field School, Edenton, NC; magnetometer survey and mapping of Edenton Harbor and environs, preliminary examination and mapping of 18th century ship and 19th century centerboard vessel.

6-7/81 Graduate Intern, ECU Underwater Archaeology Field School, New Bern, NC; magnetometer survey and mapping of the Trent and Neuse rivers.

9/81-6/82 Graduate Researcher, J.Y. Joyner Library, Manuscript Collections; organized, analyzed, cataloged and abstracted unprocessed primary source collections, indexed collections and composed finding aids.

10/81 Assistant Archaeologist, Blossom's Ferry Site, Northeast Cape Fear River, NC; preliminary reconnaisance [sic] and mapping of vessel remains.

7-8/82 Archaeology Assistant/Diving Safety Officer, ECU Underwater Archeology Field School, Cape Lookout, NC; magnetometer survey of Cape Lookout Bight and environs.

11/69-8/79 Director, Shellfish Sanitation Laboratory, NC Department of Human Resources, Morehead City, NC.
*Accountable for execution of all functions of a public service biological laboratory
*Conducted basic and advanced training of sport divers
*Contracted for diver training with regional colleges
*Administered specialty training to State agency staffs

References available on request.

James R. Reedy, Jr.
P.O. Box 1956
Morehead City, NC 28557
(919) 247-6744

Partial Listing of Publications and Presentations

TECHNICAL PAPERS AND REPORTS

Reedy, James R., Jr. "Excavation of Vessel #6, Area 3,

1995 Fig Island Channel Site, Savannah, GA. 28th Annual Conference on Historical and Underwater Archaeology, Ms. on file, District Corps of Engineers Office, Savannah.

1993 ----- "A Brief History of the Centerboard in America." Ms. on file, Mid-Atlantic Technology, Inc., Wilmington, NC and District Corps of Engineers Office, Savannah, GA.

1991 ----- "Suggestions for modifications to portable gold-mining sluices for use on submerged archaeological sites." *The International Journal of Nautical Archaeology and Underwater Exploration*, 20:3, pgs. 251-254.

1991 ----- "Field procedures developed for a scattered, deeply buried site in a high energy location: WLF-HA-1, Cape Cod, Massachusetts, USA." *The International Journal of Nautical Archaeology and Underwater Exploration*, 20:1, pgs. 53-58.

1991 ----- "Annual Report to the Maryland Historic Trust on Intensive Survey Permit #90-IS-1" (April, 1990). Ms. on file, Underwater Archaeology Branch, Maryland Historic Trust, Crownsville, MD.

Hamilton, C.E., J.R. Reedy, Jr., K.J. Kinkor and D. Muncher.

1990 "The 1989 Annual Report of Archaeological Data Recovery, Site WLF-HA-1." 2 vols. June. Ms. on file, Massachusetts Board of Underwater Archaeological Resources, Boston, MA.

1990 ----- "Primary Source Book, Site WLF-HA-1." June. Ms. on file, Massachusetts Board of Underwater Archaeological Resources, Boston, MA.

1989 ----- "Archaeological Data Recovery, Site WLF-HA-1." 1988 Annual Report, January. Ms. on file, Massachusetts Board of Underwater Archaeological Resources, Boston, MA.

Reedy, James R., Jr. "HMS *Hussar* Search, 1989 Annual Report."

1989 May. Ms. on file, Office of the State Archaeologist, New York State Museum, Albany, NY.

1988 ----- "Phase I Preliminary Report, HMS *Hussar* Search." May. Ms. on file, Office of the State Archaeologist, New York State Museum, Albany, NY.

1987 ----- "Field Procedures Developed on WLF-HA-1, off Wellfleet, Cape Cod," in *Underwater Archaeology Proceedings from the SHA Conference*, Alan Albright (ed.). Conference on Underwater Archaeology, Savannah, GA, January.

1987 ----- "Historical and Archaeological Investigations Concerning a Revolutionary War Vessel Burned at Beaufort, North Carolina in 1778." Thesis History, East Carolina University, Greenville, North Carolina. October.

Hamilton, Christopher, James R. Reedy, Jr., and Kenneth Kinkor.

1987 "Final Testing Report, WLF-HA-1, Wellfleet, Cape Cod." December, 3 volumes. Ms. on file, Massachusetts Board of Underwater Archaeological Resources, Boston, MA.

Reedy, James R., Jr. "Final Report: Exploration and Recovery

1984 Permit 84BkS524." Site of wrecked 18th century sailing vessel near Beaufort Inlet, NC. Ms. on file, Underwater Archaeology Branch, NCDAH, Kure Beach, NC. August.

Watts, Gordon P. and James R. Reedy, Jr. "An Archaeological

1982 Reconaissance of Vessel Remains Lying in the Vicinity of an Historic Ferry Crossing on the Northeast Cape Fear River." Ms. on file, Program in Maritime History and Underwater Research, History Department, East Carolina University, October.

POPULAR ARTICLES

1994 Reedy, James R. Jr. "The Destroyer's Poor Relation." *Sea History* 68, Winter 1993-1994.

1993 ----- "Battle of Cape Lookout." Coaster Magazine, Vol. XI, No. 5, September.

1993 ----- "The Wreck of the Iron Steamer." Coaster Magazine, Vol. X, No. 3, June-July.

1993 ----- "Battle Off Cape Lookout." Woodmen Magazine, Vol. 103, No. 1. January-February.

1975 ----- PADI #941. " . . . Money Can Buy." The Undersea Journal, Vol. 8, No. 1.

1975 ----- "Salt Water Fishing Holes." Wildlife in North Carolina, Vol. 39, No. 6, June.

1974 ----- "The East's Newest Resource." The New East Magazine, Vol. 2, No. 2, June-July.

1973 ----- "Tarheel Wreck Bonanza." Skin Diver Magazine, Vol. 22, No. 5, May.

VIDEO PRODUCTIONS

1992 *Reunion.* Public Broadcast Television *Return to the Sea* series by Marine Graphics, Inc., Chapel Hill, NC. Story of *U-352* – USCGC *Icarus* battle 9 May, 1942 and 50th Anniversary reunion. Historical research, still photography.

1992 " . . . *Down With The Sharks!*" Dream Keepers International. 40-minute film on *U-352* – USCGC *Icarus* battle 9 May, 1942 and 50th Anniversary reunion. Contemporary film footage and interviews with survivors of both crews. Historical research, still photography, co-producer.

PRESENTATIONS

Digging Underwater. Slide illustrated lecture on methods and techniques of underwater archaeological excavation.

HMS *de Braak*: Legend Becomes Reality. Slide illustrated history of the salvage of the Sloop-of-War *de Braak*.

Up from the Sands of Time. Slide illustrated lecture on the archaeological excavation of the pirate ship *Whydah*.

EXHIBIT B

PRELIMINARY RESEARCH DESIGN

FOR

RECOVERY OF CULTURAL MATERIAL

FROM

THE STEAM VESSEL BROTHER JONATHAN

prepared for

Deep Sea Research, Inc.
1852 Circo Del Cielo Drive
El Cajon, CA
92020

by

R2 Underwater Consultants
P.O. Box 1956
Morehead City, NC
28557

(913) 247-6744

INTRODUCTION

The firm of Deep Sea Research (DSR) has been awarded custody of a shipwreck identified as the remains

of the side-wheel steam vessel *Brother Jonathan*, off Cresent [sic] City, California. The wreck lies upright and exposed in approximately 250 feet of water.

The following document describes the equipment and methods proposed by DSR for the mapping of and recovery of specific intrinsically valuable cultural materials from the wrecksite.

This document constitutes a research design only. It is possible that some of the methods and/or objectives listed may not prove feasible after on-site investigation, therefore, changes in the proposed objectives may be forthcoming.

Brother Jonathan is believed to have carried a considerable amount of gold coin at the time she sank. As a for-profit company, one of DSR's main objectives is the recovery of the safe and strongboxes which contain that material. At the same time, DSR wishes to protect the integrity of the site and recover the maximum possible information from it.

To that end, all underwater operations will be conducted using approved archaeological technique and provenance recording. *In situ* recording will be accomplished via divers helmet cameras and/or other camera units (see *PHOTOGRAPHIC SUITE).* Artifacts will be retrieved using the utmost care, or left on the site in their original locations. Recovered artifacts will be treated according to approved preservation and conservation techniques.

R2 Underwater Consultants is of the opinion that removal of any intrinsically valuable material (i.e., the gold coins) from the wreck will remove most of the incentive for third party interlopers to attack and damage the site (see *SITE SECURITY*).

PROJECT OBJECTIVES

To examine and accurately map the shipwreck thought to be *Brother Jonathan*.

To recover specific intrinsically valuable cultural material from the wreck using approved archaeological methods and techniques.

To interpret the collected data in terms of the known history of the ship and her era, and to publish the results in appropriate scientific and popular literature.

ORDER OF EVENTS

Preliminary fly-over of the site for orientation and survey for possible transponder positioning.

Pre-disturbance video survey and still photography for establishment of a photogrammetric mosaic.

Testing of pre-determined areas to establish the condition of the wreck, extent of damage to the hull, orientation of the hull (bow/stern, direction of longitudinal axis), and the extent of any artifact scatter or debris field around the site.

Recovery of specific cultural material from selected areas of the wreck.

Publication of project results.

MAPPING STRATEGIES

Video footage has revealed that the wreck is essentially intact and standing clear of the bottom, however a substantial portion of the superstructure appears to be

gone. Considerable damage has been inflicted on the wreck by commercial fishing operations, and several large nets are still attached to and floating above it. Removal of some or all of these nets will probably be attempted in the early phases of underwater operations.

The foremost mapping objective should be a pre-disturbance site survey and a still photography photogrammetric mosaic. Video recording will be used in the pre-disturbance survey and will continue to play a large part in data collection on this site.

Objectives of the pre-disturbance survey are: 1) delineation of the site proper via visible, identifiable components (paddlewheels, anchors, windlass, funnel, etc.); 2) establishment of site boundaries via determining the extent of associated wreck debris outside main wrecksite; 3) establishment of the locations of stationary objects for use as possible datum points during the mapping and recovery phases; OR 4) establishment of a baseline using the longitudinal axis of the vessel between fixed datum points outside the wreck from which features within the wreck can be plotted; 5) analysis of the extent of damage and contamination of the site from the wrecking process and post-wrecking intrusions (commercial fishing gear, anchors, dumped material, etc.); 6) removal of surface-covering sediments to allow clear identification of features in the photogrammetric mosaic.

Mapping of individual features will most likely entail placement of a scale of known dimension at the feature to be recorded, and videotaping the feature and scale together. An alternative method currently being investigated is the use of dual calibrated lasers synchronized with the divers helmet cameras or with the

external cameras on the submarine. Accurate positioning will be accomplished using the Trackpoint II and DGPS systems described below.

EQUIPMENT

Surface Platform

Although a specific vessel for surface support has not yet been selected, several are under consideration. The final choice will be a craft of between 140 and 180 feet in length with room to house the below listed equipment and requisite personnel.

Electronics Package

The on-board electronic navigation and positioning equipment will include:

Trimble 4000 DL and RL survey grade DGPS receivers

Accqpoint RTCM104 correction receiver

486 PC with multi-port capability, HydroNav positioning and data processing software

HP 7550A plotter for real time and post-processing of positions and recorded data

HP Desk Jet printer for real time logging

Helm display and remote keyboard for use during survey operations

Additional Electronics

Other electronic equipment includes:

Model 606 EDO 100 Khz side scan sonar

Model 700SS side scan sonar with recording capability and navigation control

EDO 20-inch flat bed recorder with 3-channel capability

2-channel DAT recorder for post-processing and archiving of data

Model G-866 EG&G proton precession magnetometer

486 PC with proprietary software for real time 3-dimensional plotting of magnetic anomalies

EG&G Unimag high resolution magnetometer

Dalton Research gradiometer

Subsurface Craft

The primary underwater vehicle will be the submersible *Delta*, operated by Delta Oceanographics, Inc. of Ventura, CA. This craft is equipped with exterior lights, manipulator arms, exterior camera mounts, and a "duster" prop for light sediment removal. A second, similarly equipped submarine may also be used.

A Fathom 500 ROV (Remotely Operated Vehicle) will be employed for specific tasks that do not require use of divers or of the sub.

Both the submarines and the ROV use an O.R.E. Trackpoint II acoustic navigation system. The ORE has a

sub-mounted transponder and computes range and bearing from the surface vessel by time and signal strength across three receive transducers.

Use of the submarine will also allow archaeologists to assess the site at close range throughout the course of the project.

Photographic Suite

Delta is equipped with an externally mounted Photosea 35mm camera with a laser spotting dot feature and strobe flash. This unit has a 200-shot magazine and will be used for the photomosaic.

Video equipment includes an externally mounted Sony TR-81 Color Hi 8mm camera equipped with precisely aligned parallel lasers for performing video photogrammetry "on the fly." An internal Sony TR-101 for filming through the observation ports is also available.

In addition, divers using standard hard-hat gear will be equipped with helmet-mounted cameras for recording each step of the recovery process.

Video images from all sources will be monitored aboard the surface platform. On board monitoring equipment has the capability to intake and enhance individual video frames. Instrument input can be programmed into each video frame to record such information as time, depth, water temperature, and salinity.

Diving Systems

During the recovery phase, it may be found necessary to put divers on the site. In that case the requisite

personnel, saturation systems, decompression chambers and other equipment will be provided by Global Marine, Inc. of Seattle, WA.

Excavation Equipment

Since the wreck appears to be standing clear of the bottom, is not embedded in the seat floor, and has only a light deposit of silt over it, no excavation equipment other than *Delta*'s "duster" prop is expected to be necessary.

In the event that this is not feasible in specific areas, a water induction dredge and/or artificial current device may be employed to clear sediments so that mapping may proceed.

EXCAVATION AND RECOVERY

All excavation and recovery will be performed under the direction of experienced, qualified archaeologists supplied by R2 Underwater Consultants. Excavation and recovery procedures will follow systematic, approved archaeological method. Since the wreck is standing above the sea floor and is not buried or embedded in the bottom, many of the more destructive methods normally used in underwater excavation (airlifting, trenching, etc.) may not apply.

Site-specific procedures will be developed according to conditions. Individual areas will be delineated by 1.5 meter (or larger) grids before excavation takes place. Removal of wreck material will be done primarily by the submarines.

Cultural material will be retrieved only after having been plotted and photographed or videoed *in situ*. The use of scoops and mesh screens designed to fit the submarine manipulator arms is currently being investigated, as well as coating the mechanical fingers to improve their grip and avoid damage to artifacts.

Concern has been voiced over the possible presence of human remains within the wreck. In the opinion and experience of R2 Underwater Consultants, the probability of such material remaining within the ship is minimal in the extreme. Given the circumstances under which *Brother Jonathan* was lost, crew and passengers would have been topside in the final moments of the disaster, trying to reach the ship's boats or save themselves by grabbing pieces of flotsam. They would not have trapped themselves below decks to be drowned. Even had they done so, the unembedded condition of the wreck would have afforded ample opportunity for marine organisms to totally devour the remains, and nothing would be left.

However, in the extremely unlikely event that human remains were to be encountered, they would be treated with the same care and respect afforded any such material found on a terrestrial site.

ARTIFACT CONSERVATION

Material will be held in proper wet storage aboard the recovery vessel or at a suitable shore facility until it can be safely transported. Artifacts recovered from *Brother Jonathan* during the location and identification phase were conserved at Belle-Chasse Laboratories of Belle-Chasse, Louisiana, a reputable, experienced firm in the field of conservation of artifacts from submerged

cultural sites. Belle-Chasse will probably be contracted to conserve additional materials recovered from the site.

SITE SECURITY

Recent court proceedings and the subsequent publicity regarding ownership of *Brother Jonathan* and her cargo have attracted the attention of numerous individuals in the salvage, recreational, and "technical" diving communities. Whereas in the past, relatively deep sites such as *Brother Jonathan* were beyond the reach of most divers, advances in diving technology, particularly in the areas of nitrogen-oxygen (NITROX) mixtures and oxygen rebreathers now put such sites within easy reach of almost any diver.

It is widely known within the archaeological community that California has one oft he worst records in the country for submerged cultural resource site destruction. So-called "technical" divers using NITROX and oxygen rebreathing gear have dynamited numerous shipwrecks along the California coast in their search for saleable artifacts and gold (examples: *SS Winfield Scott* and the Santa Monica harbor wreck).

To date, the State of California has done nothing to halt these destructive activities, primarily because it has neither the funds nor the available personnel to do so.

It is therefore a very real possibility, if not a probability, that irreparable damage could be visited on the site through raiding activities by unscrupulous "technicals".

During periods that the recovery vessel is not physically on site, DSR maintains a visual and electronic surveillance to detect vessels that may attempt to anchor

over the wreck. Surveillance will be continued throughout the course of the project.

In addition to the standard furniture, equipment, and appurtenances of a vessel of her type and era, *Brother Jonathan* has long been thought to have carried a substantial amount of gold coin locked in strongboxes and the ship's safe. By ascertaining the presence or absence of the reputed treasure and, if it exists, recovering it, DSR hopes to remove much of the incentive for illegal raiders to dive on and destroy the site.

COMMENTARY AND OBSERVATION

In order for the remains of the vessel currently identified as *Brother Jonathan* to be subjected to proper archaeological recovery, it is essential that research activities be designed and developed with the systematic methodology that makes archaeology a true scientific discipline. A systematic archaeological approach is imperative for ensuring proper recovery of data preserved at the site and development of the wreck in a manner that most enhances its cultural significance. In order to achieve these goals a delicate interfacing of archaeological methodology and deep-water engineering must be attained. The ultimate reason for this research design and strategy is to minimize the errors that inevitably occur in archaeological undertakings, and to maximize the volume and quality of recovered data. Since archaeology is by its own nature a destructive process, full utilization of the technological advantages available to us is imperative if we are to obtain optimum utilization of this particular resource.

DECLARATION OF HARVEY HARRINGTON IN SUPPORT OF OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc., Defendant.	No. C 91 3899 LCB DECLARATION OF HARVEY HARRINGTON IN SUPPORT OF DEEP SEA RESEARCH, INC.'S OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY ACCOMPANYING PAPERS: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR STAY; DECLARATION OF JAMES R. REEDY, JR.; DECLARATION OF STEVE LAWSON; DECLARATION OF
STATE OF CALIFORNIA, STATE LANDS COMMISSION, Intervenor.	
GOVERNMENT OF THE UNITED STATES OF AMERICA, Intervenor.	DAVID L. FLOHR; and DECLARATION OF FLETCHER C. ALFORD Date: None Judge: The Honorable Louis C. Bechtle (FILED JUN 28 1995)

I, HARVEY HARRINGTON, declare:

1. I am the Director of Offshore Operations for plaintiff DEEP SEA RESEARCH, INC. I have personal knowledge of the matters stated in this declaration, and could competently testify to them if called as a witness.

2. I have been involved in underwater inspection, construction, repairs, and salvage for 35 years. My experience in shipwreck salvage began in 1967 when I worked for Lloyds of London to salvage the *Empire Knight*, a freighter which sank off the coast of Maine in 1942. Since that time I have been involved in more than 20 salvage operations, including historical vessels.

3. DEEP SEA RESEARCH, INC. and its investors will suffer irreparable harm if they are restrained by the Court from proceeding immediately with the salvage of the *Brother Jonathan*.

4. Because of the extreme weather conditions during most of the year, there is only a brief window in which the salvage activities may occur. At best, DEEP SEA RESEARCH, INC. will have the months of August and September to salvage the *Brother Jonathan*. To utilize those months they must begin making preparations for the salvage immediately, including the formation of binding salvage contracts and non-refundable deposits. A

delay of two or three months will actually cost DEEP SEA RESEARCH, INC. more than a year.

5. The risk of pillage has become extreme. The finding of the *Brother Jonathan* has been greatly publicized, and is now well known. Commercial fishing boats have the capability of dragging over 6,000 pounds of cargo in their nets, and can bring up valuables from the *Brother Jonathan* in addition to causing serious damage to the wreck site. For example, fish draggers on one occasion brought up a steel like boat from the *Brother Jonathan* which contained a gold bar. We also have videotaped evidence of fish nets currently affixed to the *Brother Jonathan*. Such nets present an enormous risk of damage to the wreck site as well as the risk of theft. Numerous objects are accessible to fish nets, including approximately 13 Wells Fargo transfer boxes and the ship's safe.

6. There is also a substantial risk that diving operations will be established to pillage the site. The current capabilities of self-contained mixed-gas units allow divers to stay in greater depths for longer periods of time. Now that the *Brother Jonathan* has been widely publicized, the thought that significant amounts of gold and silver may be found at the wreck site will create a dangerous temptation for clandestine diving operations.

7. Pillaging operations constitute a risk not only of the theft of gold and silver, but also the risk that other features of the site will be damaged.

8. There have also been many occasions when people have attempted to covertly pillage wreck sites with the use of dynamite. The destructive potential from such operations is obvious.

9. DEEP SEA RESEARCH, INC. currently has a radar system in place and a person monitoring the water above the wreck site from the shore. However, such measures cannot fully guarantee that attempts to pillage the site will not occur. In order to maintain security against draggers and divers, it would be necessary to employ a round-the-clock watch of the site area. At a minimum, this would require a 40-foot plus boat with two crew members on duty at all times at a cost of approximately $1,500 per day, or over $500,000 for the year. Moreover, even such extensive security is not sure to succeed. The only way to protect the *Brother Jonathan* is to salvage as soon as possible readily accessible items such as the Wells Fargo transfer boxes which exacerbate the temptation for pillage.

10. DEEP SEA RESEARCH, INC. has retained R2 Underwater Consultants, Inc., a marine archaeological firm, to consult and assist in salvaging the *Brother Jonathan*. Attached hereto as Exhibit "B" is a true and correct copy of a preliminary report prepared by R2 Underwater Consultants, Inc. for the salvage of the *Brother Jonathan*, entitled "Preliminary Research Design For Recovery Of Cultural Material From The Steam Vessel The *Brother Jonathan*." DEEP SEA RESEARCH, INC. intends to conduct its salvage operations in accordance with the plan and the recommendations outlined therein. A qualified, experienced marine archaeologist from R2 Underwater Consultants, Inc. will be present on-site during all salvage operations.

11. I have been working with the Del Norte County Historical Society to explore the possibility of a public display of artifacts recovered from the *Brother Jonathan* to date in connection with an event in Crescent

City on July 30, 1995 commemorating the 130th anniversary of the sinking of the *Brother Jonathan*. I am also working with the Del Norte County Historical Society to explore the possibility of a permanent display of artifacts from the *Brother Jonathan* in a local museum.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 28, 1995

/s/ Harvey Harrington
HARVEY HARRINGTON

DECLARATION OF STEVE LAWSON IN SUPPORT OF OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc., Defendant. STATE OF CALIFORNIA, STATE LANDS COMMISSION, Intervenor.	No. C 91 3899 LCB DECLARATION OF STEVE LAWSON IN SUPPORT OF DEEP SEA RESEARCH, INC.'S OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY ACCOMPANYING PAPERS: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR STAY; DECLARATION OF JAMES R. REEDY, JR.; DECLARATION OF HARVEY HARRINGTON; DECLARATION

GOVERNMENT OF THE UNITED STATES OF AMERICA,

Intervenor.

OF DAVID L. FLOHR; and DECLARATION OF FLETCHER C. ALFORD

Date: None
Judge: The Honorable Louis C. Bechtle
(FILED JUN 28 1995)

I, STEVE LAWSON, declare:

1. I am a former president and current officer of California Wreck Divers Inc., and have been involved in diving for over 13 years. I have personal knowledge of the matters stated in this declaration, and could competently testify to them if called as a witness.

2. The two most important aspects of whether a shipwreck is at risk of pillage are (1) access and (2) incentive. With respect to access, the *Brother Jonathan* is well within the reach of divers intent on pillaging. With the use of mixed-gas units, there is no question that current diving capabilities would enable divers to reach and pillage the *Brother Jonathan*.

3. With respect to incentive, because the location of the *Brother Jonathan* has been established, it is a very real target for pillage. Whenever divers believe that treasure or artifacts can be recovered from a shipwreck, particularly recently discovered and well-known shipwrecks, the risk of theft is very significant. Diving for treasures, artifacts, and souvenirs aboard historic shipwrecks is an increasingly common activity for sport and technical divers.

4. For example, divers' fins were discovered on board the *Monitor* wreck even though it was supposed to be under federal protection.

5. In 1987, twenty-two (22) sport divers were cited for looting wrecks off the Channel Islands.

6. Divers also regularly dive the sites of the *Andrea Doria* and other shipwrecks off the east coast.

7. All four of the gold rush era shipwrecks in the State of California – the *Frolic*, the *Tennessee*, the *Winfield Scott*, and the *Yankee Blade* – have been salvaged by both commercial and recreational divers throughout the years.

8. Finally, divers are capable of doing severe damage to the wreck as well as hauling cargo and artifacts from the site.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

DATED at Torrance, California this 27 day of June, 1995.

/s/ Steve Lawson
Steve Lawson

DECLARATION OF DAVID L. FLOHR IN SUPPORT OF OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc., Defendant.	No. C 91 3899 LCB DECLARATION OF DAVID L. FLOHR IN SUPPORT OF DEEP SEA RESEARCH, INC.'S OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY ACCOMPANYING PAPERS: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR STAY; DECLARATION OF JAMES R. REEDY, JR.; DECLARATION OF HARVEY HARRINGTON; DECLARATION
STATE OF CALIFORNIA, STATE LANDS COMMISSION, Intervenor.	

GOVERNMENT OF THE UNITED STATES OF AMERICA, Intervenor.	OF STEVE LAWSON; and DECLARATION OF FLETCHER C. ALFORD Date: None Judge: The Honorable Louis C. Bechtle (FILED JUN 28 1995)

I, DAVID L. FLOHR, declare:

1. I am a director and treasurer of plaintiff DEEP SEA RESEARCH, INC. I have personal knowledge of the matters stated in this declaration, and could competently testify to them if called as a witness.

2. To date, DEEP SEA RESEARCH, INC. and the investors have spent in excess of $300,000 to locate and preserve their rights in the *Brother Jonathan* wreck.

3. Other salvors are anxious to salvage the wreck, including some who have already applied to the State of California.

4. The interests of DEEP SEA RESEARCH, INC. and its investors will be seriously jeopardized if DEEP SEA RESEARCH, INC. is enjoined from proceeding with the salvage of the wreck site.

5. Moreover, there is a substantial risk that the site may be pillaged.

6. DEEP SEA RESEARCH, INC. is exerting its best efforts to protect the wreck site. They have installed a radar watch at the site, stationed an officer of the company nearby to watch over the site from shore, and asked the U.S. Coast Guard to maintain a watch over the site.

7. However, the location of the wreck is now widely known at least approximately. Despite the best efforts of DEEP SEA RESEARCH, INC. to protect the site, there is a significant risk that someone can sneak in by cover of night and pillage the site without being detected.

8. The only way to protect the interests of DEEP SEA RESEARCH, INC. and its investors is to permit them to raise readily accessible items such as the ship's safe and the Wells Fargo money transfer boxes so that they can be safeguarded.

9. I have extensively researched the historical record regarding the treasure cargo on board the ship when it sank in 1865. My best estimate is that the treasure cargo has a present-day value of between $25 million and $50 million.

10. DEEP SEA RESEARCH, INC. has retained R2 Underwater Consultants, Inc., a marine archaeological firm, to consult and assist in salvaging the *Brother Jonathan*. Attached hereto as Exhibit "B" is a true and correct copy of a preliminary report prepared by R2 Underwater Consultants, Inc. for the salvage of the *Brother Jonathan*, entitled "Preliminary Research Design For Recovery Of Cultural Material From The Steam Vessel The *Brother Jonathan*." DEEP SEA RESEARCH, INC. intends to conduct its salvage operations in accordance with the plan and the recommendations outlined therein. A qualified, experienced marine archaeologist from R2 Underwater Consultants, Inc. will be present on-site during all salvage operations.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 28, 1995

/s/ David L. Flohr
DAVID L. FLOHR

DECLARATION OF FLETCHER C. ALFORD IN SUPPORT OF OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC.,

Plaintiff,

v.

THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc.,

Defendant.

STATE OF CALIFORNIA, STATE LANDS COMMISSION,

Intervenor.

No. C 91 3899 LCB

DECLARATION OF FLETCHER C. ALFORD IN SUPPORT OF DEEP SEA RESEARCH, INC.'S OPPOSITION TO THE STATE OF CALIFORNIA'S MOTION FOR STAY

ACCOMPANYING PAPERS: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR STAY; DECLARATION OF JAMES R. REEDY, JR.; DECLARATION OF HARVEY HARRINGTON; DECLARATION

GOVERNMENT OF THE UNITED STATES OF AMERICA,

Intervenor.

OF STEVE LAWSON; and DECLARATION OF DAVID L. FLOHR

Date: None
Judge: The Honorable Louis C. Bechtle
(FILED JUN 28 1995)

I, FLETCHER C. ALFORD, declare:

1. I am an attorney with the law firm of Gordon & Rees. I have personal knowledge of the matters stated in this declaration, and could competently testify to them if called as a witness.

2. I have been advised by the office of the clerk for the Ninth Circuit Court of Appeal that the average time for disposition of an appeal in this circuit is approximately one year.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 28, 1995

/s/ Fletcher C. Alford
FLETCHER C. ALFORD

NOTICE OF MOTION AND MOTION OF DEEP SEA RESEARCH, INC. FOR LEAVE TO DISPLAY ARTIFACTS

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC.,

Plaintiff,

v.

THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc.,

Defendant.

STATE OF CALIFORNIA, STATE LANDS COMMISSION,

Intervenor.

No. C 91 3899 LCB

U.S. Court of Appeals Docket Number: 95-15693

NOTICE OF MOTION AND MOTION OF PLAINTIFF DEEP SEA RESEARCH, INC. FOR LEAVE TO DISPLAY ARTIFACTS

ACCOMPANYING PAPERS: MEMORANDUM OF POINTS IN SUPPORT OF MOTION; DECLARATION OF HARVEY HARRINGTON;

GOVERNMENT OF THE UNITED STATES OF AMERICA,

Intervenor.

and DECLARATION OF PETER PELKOFER

Date: Not Set
Judge: The Honorable Louis C. Bechtle

PLEASE TAKE NOTICE that, on a date and time, if any, to be hereinafter set by the Court, a hearing will be held on the motion of plaintiff DEEP SEA RESEARCH, INC. for leave to publicly display certain artifacts recovered from the shipwreck of the *Brother Jonathan*, on July 30, 1995, as part of a ceremony to be held at the *Brother Jonathan* gravesite in Crescent City, California, and to thereafter temporarily loan such artifacts to the Del Norte County Historical Society for further display in its museum in Crescent City.

The motion will be based upon this notice, the accompanying memorandum of points and authorities, the declarations submitted herewith, and upon any further matters as may hereafter be submitted to the Court.

Dated: July 19, 1995

GORDON & REES
By: /s/ Fletcher C. Alford
Fletcher C. Alford

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

AGREEMENT BETWEEN DEEP SEA RESEARCH, INC., AND THE DEL NORTE COUNTY HISTORICAL SOCIETY

AGREEMENT BETWEEN DEEP SEA RESEARCH, INC. AND THE DEL NORTE COUNTY HISTORICAL SOCIETY

I. RECITALS

1. Deep Sea Research, Inc. ("DSR") is a California Corporation. The United States District Court for the Northern District of California has appointed DSR salvor of the shipwrecked vessel *Brother Jonathan* (which is located off the coast of Del Norte County, California), and has vested DSR with the exclusive right to recover artifacts from the wreck. Although the Court has granted DSR the right to exclusive possession of all artifacts recovered from the wreck the Court has not yet awarded DSR title to those artifacts. The Court has also ordered that all artifacts recovered from the wreck must remain within the geographic boundaries of the United States District Court for the Northern District of California.

2. The Del Norte County Historical Society ("the Society") is a non-profit organization dedicated to promoting public understanding and appreciation of the history and heritage of Del Norte County. The Society operates a museum in Crescent City, California, which is open to the public. The Society also owns a house and an accompanying garage ("the garage") located at 780 J St., in Crescent City. The house and garage were donated to the Society by a local citizen, and are no longer being used as a private residence. The garage is structurally sound and in good condition, has a concrete floor, a weather-tight roof, lock-able doors, and electrical service.

3. DSR recognizes that the *Brother Jonathan* is an important aspect of the history and heritage of Del Norte County. DSR wishes to make accessible to the public selected artifacts recovered from the wreck. The Society wishes to assist DSR in that regard. To further their mutual goals, DSR and the Society wish to organize and staff a facility, at the garage, for use in the conservation and restoration of selected artifacts recovered from the wreck (the "conservation facility").

II. COVENANTS

4. The Society agrees to make the garage available, beginning on June 15, 1997, for use as a facility for the conservation and restoration of selected artifacts recovered from the *Brother Jonathan*. The Society agrees that it will not, at any time during the term of this agreement, cause or allow the garage or the real property on which it is situated to be conveyed, encumbered, liened, leased, rented, sold, or used for any purpose that unreasonably interferes with its use as a conservation facility as set forth herein.

5. The Society agrees to use reasonable efforts to recruit volunteers to staff the conservation facility, and to perform the work required in conserving and restoring such artifacts as may be placed in the conservation facility. Although the Society is under no obligation to conduct complete background checks on such volunteers, the Society agrees to exercise reasonable care and discretion in selecting volunteers that are believed to be trustworthy and responsible.

6. DSR agrees to provide to the conservation facility certain selected artifacts that DSR has, or will,

recover from the *Brother Jonathan* shipwreck. The parties hereto understand and agree that DSR shall exercise its sole discretion in selecting the artifacts that will be recovered from the wreck, and in deciding which of those artifacts will be provided to the conservation facility pursuant to this agreement. However, to the extent reasonably feasible, DSR will consider the Society's expressed interests in that regard.

7. The parties hereto agree that they will each use their best efforts to ensure that no artifacts are lost, damaged, or stolen while at the conservation facility. DSR agrees to have a professional security alarm system installed in the conservation facility, at DSR's expense.

8. DSR agrees to pay for reasonable utilities charges incurred in the operation of the conservation facility, through and until the date of termination of this agreement.

9. DSR agrees to provide a professional artifact conservation expert, at DSR's expense, who will train the volunteers in conservation and restoration of the artifacts.

10. DSR agrees to provide the Society with all of the materials, equipment, and supplies reasonably necessary for operation of the conservation facility.

11. The parties hereto understand and agree that the artifacts that are treated at the conservation facility shall be placed in the Society's museum for public display, after undergoing appropriate conservation and restorative treatment. The Society understands that the Court has not authorized DSR to convey title to any artifacts at this time. However, DSR agrees to recommend to the Court that the Society be vested with title to all artifacts that are the subject of this agreement.

12. The parties hereto understand and agree that artifacts of unique historical value shall not be sold, but rather shall be reserved for display at the Society's museum. Generally, artifacts of unique historical value shall be those that are in some way uniquely associated with the *Brother Jonathan* or its time. By way of example only, this category shall include items such as the steam whistle from the *Brother Jonathan* or other portions of the ship itself, as well as passenger effects. If DSR and the Society jointly determine that the recovery effort has produced a surplus of any particular class of non-unique items (for example, china, bottles, cups, or glass insulators), in excess of that which the Society can display in its museum, such surplus of non-unique items shall be considered suitable for commercial sale. The parties hereto understand and agree that non unique surplus items deemed by the parties to be suitable for commercial sale shall be offered for sale by the Society, subject to the Court's prior approval. In that regard, the parties shall periodically submit to the Court a list of all items the parties intend to offer for sale, and shall obtain the Court's approval before offering any such items for sale. The Society agrees that it will be responsible for marketing and sale of all such items, and for any expenses incurred in connection therewith, except that DSR shall, at its expense, provide to the Society any and all reasonably available documentation establishing the authenticity or origin of the items offered for sale. The Society agrees to maintain reasonably detailed and accurate records of the expenses incurred and proceeds received in marketing and sale of the items, and agrees to make such records available for inspection by DSR or the Court upon reasonable notice. The parties agree that the net profits from the sale of such items ("net profit" to be defined as gross sales price minus costs of marketing

and sale) shall be divided equally between the parties. The parties understand and agree that the Society's share of said net profit shall be used by the Society to further its historical purposes as it sees fit. The parties understand and agree that DSR's share of said net profit shall be used to help defray the cost of recovering and conserving the artifacts.

13. The Society understands and agrees that neither this agreement nor the conduct of the parties pursuant to this agreement shall be deemed to create any liens or other encumbrances of any kind in favor of the Society against any artifacts that are the subject of this agreement. The Society understands and agrees that neither this agreement nor the conduct of the parties pursuant to this agreement shall be deemed to create a legal partnership between DSR and the Society or provide the Society with the legal status of salvor of the *Brother Jonathan*, or any of the rights or duties incident thereto.

14. The Society understands and agrees that DSR may recover coins, precious metals, or other items from the *Brother Jonathan*, which DSR may in its sole discretion determine shall not be processed at the conservation facility. Such items shall not be subject to this agreement, and the Society shall have no interest in such items by virtue of this agreement.

15. The person executing this agreement on behalf of the Society represents and warrants that she has obtained the authorization and approval of the Society's board of directors and its membership, as necessary to enter into this agreement. The person executing this agreement on behalf of DSR represents and warrants that he has obtained the authorization and approval of DSR's

board of directors, as necessary to enter into this agreement.

16. The parties agree that this agreement shall remain in full force and effect for one year from the date of execution of this agreement, and thereafter may be renewed by mutual agreement of the parties. The Society understands that early termination of this agreement by the Society could cause substantial hardship and inconvenience to DSR, in light of the expense and difficulty that would be involved in making alternative arrangements for the handling and treatment of the artifacts that are the subject of this agreement

17. This agreement may not be modified except by a written instrument signed by duly authorized representatives of both parties.

SO AGREED:

Dated 5-23-97

Deep Sea Research, Inc., by:

/s/ illegible

Its: _____

Dated 5-18-97

Del Norte County Historical Society, by:

/s/ illegible Morris, President

Its: _____

_____

STIPULATION RE AUGMENTATION OF RECORD

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc., Defendant. _____/	No. C 91 3899 LCB U.S. Court of Appeals Docket Number: 95-15693 STIPULATION RE AUGMENTATION OF RECORD

STATE OF CALIFORNIA, STATE LANDS COMMISSION,
Intervenor.
_____/

GOVERNMENT OF THE UNITED STATES OF AMERICA,
Intervenor.
_____/

Intervenor/Appellant STATE OF CALIFORNIA, STATE LANDS COMMISSION, Intervenor UNITED STATES OF AMERICA, and Plaintiff/Respondent DEEP SEA RESEARCH, INC. hereby stipulate, by and through their respective counsel of record, that the clerk's record on appeal in the above-referenced matter be augmented by inclusion of the document entitled "Claim of United States of America as Owner of Goods and Cargo", a true and correct copy of which is attached hereto as Exhibit "A". Said document was filed with the District Court in this matter.

The parties further stipulate, by and through their respective counsel of record, that the clerk's record on appeal in the above-referenced matter be augmented by inclusion of the District Court's Memorandum and Order of July 13, 1995 denying the STATE OF CALIFORNIA, STATE LANDS COMMISSION's Motion for Stay, a true and correct copy of which is attached hereto as Exhibit "B". Said document was filed with the District Court in this matter.

Dated: July 21, 1995

GORDON & REES

By: /s/ Fletcher C. Alford
Fletcher C. Alford

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

Dated: July 25, 1995

STATE LANDS COMMISSION

By: /s/ Peter Pelkofer
Peter Pelkofer

Attorneys for Intervenor/
Appellant STATE OF
CALIFORNIA, STATE
LANDS COMMISSION

Dated: July ___, 1995

UNITED STATES GOVERNMENT

By: _____
Barbara B. O'Malley

Attorneys for Intervenor
UNITED STATES OF AMERICA

AFFIDAVIT OF CHERILYN E. WIDELL IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA
and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF CHERILYN E. WIDELL IN SUPPORT
OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue,
Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

AFFIDAVIT OF CHERILYN E. WIDELL

I, CHERILYN E. WIDELL, declare:

I am the California State Historic Preservation Officer. I was appointed to that position by the Governor in consultation with the State Historical Resources Commission. By statutory directive I serve as the Executive Secretary of the State Historical Resources Commission and as the Chief Administrative Officer of the Office of Historic Preservation.

On August 11, 1995, at its regular meeting the State Historical Resources Commission in a public hearing considered the nomination of the *Brother Jonathan* to the National Register of Historic Places. In my capacity as Executive Secretary of the Commission, I attended the meeting and was present during the entire hearing on the *Brother Jonathan*. Attached as Exhibit "A" is a true and

correct copy of the nomination papers for the *Brother Jonathan*.

At the hearing, Fletcher Alford, attorney for Deep Sea Research, Inc., appeared. He submitted papers to the Commission, a true and correct copy of which is attached as Exhibit "B." Mr. Alford spoke in opposition to the nomination.

After the close of the public hearing, the State Historical Resources Commission found the *Brother Jonathan* eligible for the National Register of Historic Places at the national level of significance under criteria A, C, and D. Criteria A includes, "Property [which] is associated with events that have made a significant contribution to the broad patterns of our history." Criteria C includes, "Property [which] embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction." Criteria D includes, "Property [which] has yielded, or is likely to yield information important in prehistory or history."

The Commission voted unanimously to recommend that the State Historic Preservation Officer forward the nomination to the National Park Service for final review and formal listing in the National Register of Historic Places.

As the designated authority under the National Historic Preservation Act of 1986, as amended, on August 16, 1995, I certified that the *Brother Jonathan* nomination meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set fourth in

36 CFR Part 60. In my opinion, the property meets the National Register Criteria. I recommended that this property be considered significant nationally. That certification appears on the page one of Exhibit "A" attached.

I declare under penalty of perjury that the foregoing is true and correct, and this declaration was executed in Sacramento, California on August 23, 1995.

/s/ Cherilyn E. Widell
CHERILYN E. WIDELL
State Historic Preservation Officer

EXHIBIT A TO WIDELL AFFIDAVIT

United States Department of the Interior
National Park Service

NATIONAL REGISTER OF HISTORIC PLACES
REGISTRATION FORM

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in How to Complete the National Register of Historic Places Registration Form (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. NAME OF PROPERTY

historic name Brother Jonathan
other names/site number _____

2. LOCATION

street & number N/A not for publication N/A
city or town Crescent City-Offshore vicinity X
state California code CA county Del Norte code 015
zip code N/A

3. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this X nomination _ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property X meets _ does not meet the National Register Criteria. I recommend that this property be considered significant X nationally _ statewide _ locally. (_ See continuation sheet for additional comments.)

/s/ Cherilyn Widell — August 16, 1995
Signature of certifying official — Date

State Historic Preservation Officer
State or Federal agency and bureau

==========

In my opinion, the property _ meets _ does not meet the National Register criteria.
(_ See continuation sheet for additional comments.)

_____ _____
Signature of commenting or other official — Date

_____
State or Federal agency and bureau

---

4. NATIONAL PARK SERVICE CERTIFICATION

I, hereby certify that this property is: Signature of Keeper — Date of Action

_ entered in the National Register. _____ _____
_ See continuation sheet.
_ determined eligible for the National Register. _____ _____
_ See continuation sheet.
_ determined not eligible for the National Register. _____ _____
_ removed from the National Register. _____ _____
_ other (explain): _ _____ _____
_____ _____ _____

United States Department of the Interior
National Park Service

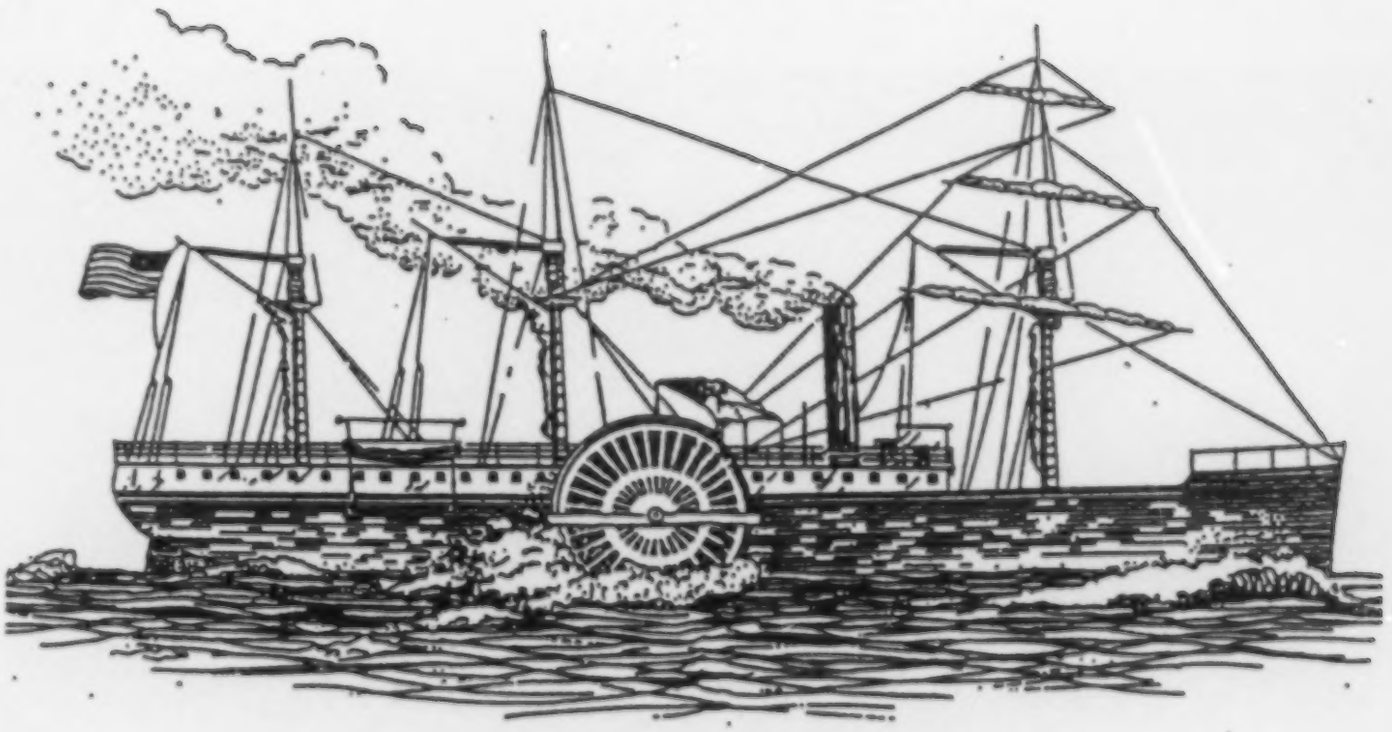
NATIONAL REGISTER OF HISTORIC PLACES
REGISTRATION FORM

NOMINATION OF

THE *BROTHER JONATHAN* - SHIPWRECK SITE

TO THE NATIONAL REGISTER OF HISTORIC PLACES

377



The Brother Jonathan *after her refit in 1852.*

AF - 00005

United States Department of the Interior
National Park Service

NATIONAL REGISTER OF HISTORIC PLACES
REGISTRATION FORM

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in How to Complete the National Register of Historic Places Registration Form (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

---

1. NAME OF PROPERTY

---

historic name Shipwreck Site and Remains, Brother Jonathan

other names/site number Brother Jonathan

---

2. LOCATION

---

street & number N/A not for publication ___

city or town Offshore-Crescent City vicinity ___

state California code CA county Del Norte code ___
zip code N/A

3. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this _ nomination _ request for determination of eligibilty meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property _ meets _ does not meet the National Register Criteria. I recommend that this property be considered significant _ nationally _ statewide _ locally. (_ See continuation sheet for additional comments.)

/s/ _____ _____
Signature of certifying official — Date

_____
State or Federal agency and bureau

==========

In my opinion, the property _ meets _ does not meet the National Register criteria.
(_ See continuation sheet for additional comments.)

_____ _____
Signature of commenting or other official — Date

_____
State or Federal agency and bureau

4. NATIONAL PARK SERVICE CERTIFICATION

I, hereby certify that this property is: Signature of Keeper Date of Action

_ entered in the National Register. _____ _____
_ See continuation sheet.
_ determined eligible for the National Register. _____ _____
_ See continuation sheet.
_ determined not eligible for the National Register. _____ _____
_ removed from the National Register. _____ _____
_ other (explain): _ _____ _____
_____ _____ _____

5. CLASSIFICATION

Ownership of Property (Check as many boxes as apply)

___ private
___ public-local
_X_ public-State
___ public-Federal

State of California
State Lands Commission

Category of Property (Check only one box)

___ building(s)
___ district
_X_ site
___ structure
___ object

Name of related multiple property listing
(Enter "N/A" if property is not part of a multiple property listing.)

N/A

Number of Resources with Property
(Do not include previously listed resources in the count.)

Contributing	Noncontributing	
N/A		buildings
		sites
		structures
		objects
		Total

Number of contributing resources previously listed in the National Register

Please see continuation sheet

6. FUNCTION OR USE

Historic Functions (Enter categories from instructions)

Cat:	Sub:
Transportation	Water related

Current Functions (Enter categories from instructions)

Cat:	Sub:
Not in use	

7. DESCRIPTION

Architectural Classification (Enter categories from instructions)	Materials (Enter categories from instructions)	
N/A	foundation	N/A
	walls	N/A
	roof	N/A
	other	N/A

Narrative Description
(Describe the historic and current condition of the property on one or more continuation sheets.)

Please see continuation sheet

8. STATEMENT OF SIGNIFICANCE

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing)

X A Property is associated with events that have made a significant contribution to the broad patterns of our history.

_ B Property is associated with the lives of persons significant in our past.

X C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

X D Property has yielded, or is likely to yield information important in prehistory or history.

Areas of Significance
(Enter categories from instructions)

Archaeology-historic

Architecture

Commerce

Engineering

Exploration/Settlement

Transportation

Period of Significance

1850-1865

Criteria Considerations (Mark "X" in all the boxes that apply.)

Property is:

_ A owned by a religious institution or used for religious purposes.

_ B removed from its original location.

_ C a birthplace or a grave.

_ D a cemetery.

_ E a reconstructed building, object, or structure.

_ F a commemorative property.

_ G less than 50 years of age or achieved significance within the past 50 years.

Significant Dates

July 30, 1865

Significant Person
(Complete if Criterion B is marked above)

Cultural Affiliation

Architect/Builder

Perrine, Patterson & Stack

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

Please see continuation sheet

9. MAJOR BIBLIOGRAPHICAL REFERENCES

Bibliography "*Please see footnotes cited in the text (at end of document).*"
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

_ preliminary determination of individual listing (36 CFR 67) has been requested
_ previously listed in the National Register
_ previously determined eligible by the National Register
_ designated a National Historic Landmark
_ recorded by Historic American Buildings Survey # _____
_ recorded by Historic American Engineering Record # _____

Primary Location of Additional Data:

_ State Historic Preservation Office
_ Other State agency
_ Federal agency
_ Local government
_ University
_ Other

Name of repository: _____

10. GEOGRAPHICAL DATA

Acreage of Property: 19.5 acres consisting of a circle with radius of 5,200 feet with a center point at coordinates 41° 46' 29" N – 124° 20' 50" W.

UTM References
(Place additional UTM references on a continuation sheet)

	Zone	Easting	Northing		Zone	Easting	Northing
1	___	_____	_____	3	___	_____	_____
2	___	_____	_____	4	___	_____	_____

___ See continuation sheet.

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.) **Please see continuation sheet**

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.) **Please see continuation sheet**

11. FORM PREPARED BY the Staff of the State Lands Commission Narrative Description and Statement of Significance researched and written by

name/title James P. Delgado, Executive Director-Vancouver Maritime Museum

organization (for) State Lands Commission

date July 5, 1995

street & number 100 Howe Avenue, Suite 100 South
telephone (916) 574-1850

city or town Sacramento state CA zip code 95825

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps

NOAA-National Ocean Service Chart No. 18603

A USGS map (7.5 or 15 minute series) indicating the property's location.

A Sketch map for historic districts and properties having large acreage or numerous resources.

Photographs

Representative black and white photographs of the property.

Additional items
(Check with the SHPO or FPO for any additional items)

Video tape, "The Brother Jonathan Found," October 1993

Property Owner

(Complete this item at the request of the SHPO or FPO.)

name State of California-State Lands Commission

street & number 100 Howe Avenue, Suite 100 South- telephone (916) 574-1850

city or town Sacramento state CA zip code 95825

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine

eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and the Office of Management and Budget, Paperwork Reductions Project (1024-0018), Washington, DC 20503.

SECTION 5-CLASSIFICATION

Brother Jonathan
Del Norte, California

Deep Sea Research, Inc., a treasure salvor, is currently contesting the State's ownership of the vessel and is seeking the right to salvage it for its economic value. An appeal from the Federal District Court for the Northern District of California is pending before the Ninth Circuit Court of Appeals. A decision is anticipated in the early 1996.

SECTION 7 – DESCRIPTION

Brother Jonathan
Del Norte, California

The substantially intact archaeological remains of the sidewheel steamer BROTHER JONATHAN lie south of St. George Reef, approximately four and one half miles off the Del Norte County coastline of California.

BROTHER JONATHAN AS BUILT AND MODIFIED, 1850-1865

As built in 1850, BROTHER JONATHAN was a 1,359 52/95-ton two-masted sidewheel steamer. The vessel's registered dimensions were 220 feet, 11 inches in length, with a 36-foot beam, and a 21-foot depth of hold. The New York HERALD of November 27, 1850, commenting on the steamer, described the construction of the hull:

> Her floors are solid, 14 inches in depth, bolted together with 1¾" iron; five keelsons and head pieces cadged and bolted to the solid floor. The frame, at the turn of the bilge, is peculiar for its great strength, being additionally secured by strong iron diagonal braces, forming a perfect network from stem to stern; over which is laid yellow pine planking from five to eight inches thick and all square fastened. The decks are of the most substantial description, being thoroughly secured with lodging and hanging knees. The outside is planked with white oak, and well tree-nailed and copper fastened. She has a billet-head and bowsprit, which give her a most neat and beautiful finish.

The JOURNAL OF THE FRANKLIN INSTITUTE, reporting on BROTHER JONATHAN in May 1851, corroborated the dimensions reported in the HERALD and noted that the hull was built of "live oak, white oak, locust and cedar, secured by diagonal braces of flat iron bar 5 feet apart, 4½ inches wide by ¾, and extending from stem to stern. [1]

An 1851 painting of the steamer shows her as built with a modified barkentine rig, a single stack abaft the foremast but forward of the sidewheels, a straight bow and a round stern. A pump brake windlass is carried at the bow along with a capstan. The bow was ornamented with trailboards and a billethead. The hull was painted black with a blue wale and buff deckhouses. The main deckhouse was located amidships, and was surmounted by the prominent "walking beam" of the engine; a smaller house, located forward and between the stack and foremast served as the wheelhouse. The wheelboxes, as shown in the painting, are black and red, with gilt eagles on the side panels. The stern also carries a gilded eagle. The painting show BROTHER JONATHAN equipped with four lifeboats, two immediately forward and two abaft the wheels. [2]

The New York HERALD reported in 1850 that "her saloon will be fitted up in a chaste but elegant style, with panelling being white enamel and gold, and her arrangements for ventilation are most excellent." [3] As built, BROTHER JONATHAN had accommodations for 365 passengers, most below decks in the steerage. E.S. Capron, aboard the steamer PROMETHEUS in 1853, described that near-sister of BROTHER JONATHAN's steerage; "it is situated in the very bottom of the vessel; a damp, dark poorly ventilated hole. Here, often, from three to five hundred human beings are congregated for a

voyage . . . . [4] Better accommodations were found on the next, or 'tween deck. The main saloon was a 70-foot long compartment lined with 24 staterooms, twelve on each beam. Franklin Langworthy, a passenger aboard BROTHER JONATHAN in April 1853, noted the steamer had berths for 500 passengers;

> the saloon is below the main deck, towards the stern, and is about eighty feet in length by twenty feet in width, surrounded by staterooms having doors of panell [sic] work, ornamented with gildings. . . . The floor is carpeted with oil-cloth carpeting of bright and variegated colors. The seats consist of chairs and settees with crimson cushions. [5]

BROTHER JONATHAN's sidewheels were driven by a single beam engine. This type of engine, usually employed on river and sound steamers, had recently been introduced to ocean steamers. The engines, manufactured by T. F. Secor and Co., were originally from the Long Island Sound steamer ATLANTIC, wrecked off Fisher's island near New London, Connecticut on November 26, 1846. Salvaged from the wreck, they were rebuilt by the Morgan Ironworks of New York and installed in BROTHER JONATHAN.

The JOURNAL OF THE FRANKLIN INSTITUTE, commenting on the recent installation of beam engines in BROTHER JONATHAN and four other steamships, noted the controversial nature of the installation. "The objection urged against this form of engine has been, that it elevates the center of gravity" through the introduction of the large "walking beam," a 10-ton casting elevated "12 to 15 feet above the deck." However, the weight of the boilers, and other machinery counter-balanced the

walking beam. Thus, the "recent introduction of the ordinary beam engine of our river boats into several sea steamers of magnitude has been so far attended with complete success," and gradually replaced the earlier favorite, the sidelever engine. [6] The JOURNAL noted BROTHER JONATHAN's engine has a 72-inch diameter cylinder with an 11-foot stroke. The 400-h.p. engine drove two 33-foot diameter paddlewheels with a nine-foot face and 30-inch deep paddles. Steam was provided by two coal-fired shell boilers 12 feet in diameter and 28 feet long. [7]

In March 1852, BROTHER JONATHAN was altered by a new owner to carry more passengers. The bulwarks were raised and accommodations were increased to 750 berths. The deckhouses were cut back forward, opening the bow, which was rebuilt to a straight stem with an enlarged well and forecastle. The deckhouse was extended aft to the fantail, adding accommodations, and the stack was relocated aft to amidships from its earlier, forward position. A third mast, a fore and aft rigged mizzen, was added. The appearance of BROTHER JONATHAN after this modification is best captured in an engraving of an unnamed steamer, possibly BROTHER JONATHAN that appears on the cover of Hutchings' California Magazine for January 1858. [8]

In 1858, BROTHER JONATHAN was strengthened with the introduction of 6,000 new iron bolts in the hull, The ship was again hauled and rebuilt in May 1861 at San Francisco. The hull planking was removed, two bilge keelsons and a reinforcing false keel were added, and the hull planks were replaced with Oregon oak and copper sheathed. The editors of the San Francisco DAILY ALTA CALIFORNIA commented that she looked "for all the

world like the skeleton of some antediluvian megatherium or mastodon raked out of the ruins of an extinct creation. . . . [9]

The machinery was overhauled and the boilers were replaced with two patented Martin tubular boilers with six furnaces. The accommodations below and on deck were rebuilt to increase cargo capacity to 900 tons of freight. The saloon was ripped out and replaced by a new one, panelled in California redwood and 120 feet long. Plans announced in the DAILY ALTA CALIFORNIA called for all passenger accommodations to be located on the main deck, with family suites and double cabins. [10]

An 1863 photograph of San Francisco's waterfront as seen from Telegraph Hill captured BROTHER JONATHAN at anchor off the Broadway Street wharf and shows her as she appeared after the rebuild and at the time of her loss in 1865. The hull's lines are unchanged. The vessel is rigged as barkentine with three masts, with an elevated pilothouse immediately forward of the stack. [11]

ARCHAEOLOGICAL REMAINS OF BROTHER JONATHAN

Observations on the archaeological remains of BROTHER JONATHAN are based solely on a video reconnaissance conducted with a remotely operated vehicle in 1993; additional reconnaissance, still photography, and the preparation of a site map have yet to be conducted. The observed characteristics of the site, however, as well as its location, indicate that the identity of the wreck is BROTHER JONATHAN.

The wreck lies embedded in the sand and silt bottom at a depth of some 150 feet off St. George Reef, and to the southeast of Jonathan Rock. The wreck lies inside a Court-injuncted zone near Dragon Channel. The wreck is clear and visible on side-scan sonar as a linear target with a slightly curved, "ship" shape.

The principle feature on the site is a substantial portion of the lower hull for an estimated two-thirds of the steamer's original length, which has survived to a level below the original waterline. The hull appears to be resting to port, with the outer hull planking and copper sheathing protruding from the bottom. Video reconnaissance shows surviving ceiling planking and the exposed ends of floors and frames. The line of separation on the hull appears to be close to the turn of the bilge in some areas, with some frames and upper hull resting at an angle on the bottom where they have separated from the floors.

Visible portions of the ship's diagonal iron strapping are evident, and a layer of iron concretion covers many exposed timbers, perhaps accounting for the survival of substantial timber remains. The upper hull has apparently been consumed by marine organisms, as evidenced by the presence of exposed large drifts and other fasteners, in some cases with partially consumed timber adhering to it. The unconsumed portions, impregnated with oxides, are a common indicator of organic activity. While a layer of silt covers many timbers as well, and bottom sediments are probably dynamic, cyclic burial and uncovering are unlikely at the site given the presence of a substantial colony of anemones.

Machinery exposed on the site includes the port paddlewheel shaft, with hubs. The arms are missing. Inside

the hull, the engine machinery is present, although displaced. The cylinder lies on its side, separated from the bedplate, with the D-valve exposed. The boilers are present, although the jacket of one has apparently corroded, exposing articulated rows of boiler tubes. What appears to be the heat exchanger lies near the exposed boiler. Various steam lines, rods and shafts lie disarticulated inside the hull and in this area.

A number of ceramic artifacts lie scattered outside the hull and inside it. At or after the time of the vessel's, a ceramic gun bottle, a dark glass wine bottle and ceramic plates with New York maker's marks were recovered. Rows of other plates, bowls, and a chamber pot were observed on site, some of them lying atop exposed floor and ceiling timbers and on frame ends. Their presence may represent post-sinking deposition as intact structure was consumed by marine organisms. The appearance of the wreck is that of a vessel that sank more or less intact and has slowly disintegrated through organic activity, leaving a number of artifacts in relative position to their original placement in the vessel. This argues for a high level of archaeological integrity and research value as the site formation process was, after sinking damage, apparently gentle and gradual.

FOOTNOTES, SECTION 7

1
Journal of the Franklin Institute, Vol. XXL, No. 5, (Third Series), May 1851, p. 354.

2
Oil painting, "Brother Jonathan," by James Bard (1815-1897), dated 1851, collection of the Griswold Inn, Essex, Connecticut.

3
New York HERALD, November 27, 1850.

4
E.S. Capron, *History of California*. . . . (Boston: John P. Jewett & Company, 1854), p. 247.

5
Franklin Langworthy, *Scenery of the Plains, Mountains and Mines*, ed. Paul C. Phillips. (Princeton: Princeton University Press, 1932), p. 217.

6
Journal of the Franklin Institute, Vol. XXL, No. 6, (Third Series), June 1851, pp. 419-420.

7
Journal of the Franklin Institute, Vol. XXL, No. 5, (Third Series), May 1851, p. 354.

8
"The Steamer Has Arrived." Hutchings' California Magazine, Vol. II, No. 7, January 1858, p.1.

9
San Francisco Daily Alta California, May 4, 1861.

10
Ibid.

11
Photograph, "Harbor & Anchorage, San Francisco," (1863), photograph A12.15237 pl, National Maritime Museum, San Francisco.

SECTION 8 – STATEMENT OF SIGNIFICANCE

Brother Jonathan
Del Norte, California

The substantially intact, archaeological remains of the steamship BROTHER JONATHAN are a NATIONALLY significant entity under criterion A, C and D. Built in New York in 1850 for Atlantic service to Panama at the height of the California Gold Rush (1848-1855), BROTHER JONATHAN was sent to the Pacific in 1852 to serve on the Nicaragua Route. BROTHER JONATHAN operated between Nicaragua and San Francisco, carrying passengers and freight, until 1856. BROTHER JONATHAN was then sold and entered a new career as one [sic] the region's first coastal passenger and freight steamers between 1858 and 1865. The development of San Francisco and other Pacific coast ports between California and Puget Sound was made possible by regular steam service between them. BROTHER JONATHAN also played a significant role in the development of trade and commerce on the coast; according to historian Alfred Lomax, BROTHER JONATHAN and other early coastal steamships "were literally the commercial arteries of the Pacific Coast economy, carrying vital products of mine, forest, farm and factory to expanding consumption centers extending from California to British Columbia." BROTHER JONATHAN also served in two later Pacific Coast gold rushes, the first to British Columbia in 1858, when she also carried the first group of emigrating black Californians escaping persecution, and the second to Idaho-bound passengers in 1862. The tremendous loss of life and the social impact of BROTHER JONATHAN's wreck in 1865 conferred additional importance to the vessel as the worse maritime disaster in California

waters, and one of the worse maritime disasters on the Pacific Coast.

A number of the vessels engaged in the early Pacific coastal trade were Gold Rush veterans like BROTHER JONATHAN. The well-preserved structure and machinery of the ship at the site are a significant entity in their form and design. BROTHER JONATHAN's walking beam marine steam engine, essentially unaltered during the vessel's 15-year career, was a significant departure from the side-lever engines of earlier ocean-going steamers and the well-preserved hull's lines and form, retained through an 1861 rebuild, evidenced a transition from the sailing ship-inspired hulls of contemporary steam vessels to a straight-stemmed hull that foreshadowed later steamship hull forms. BROTHER JONATHAN sank into deep water and was not relocated until recently. The lack of salvage or other disturbance confers a high level of archaeological integrity. The remains of BROTHER JONATHAN are the best preserved of any Gold Rush steamer on the Pacific coast, including the National Register-listed TENNESSEE, WINFIELD SCOTT, or YANKEE BLADE. BROTHER JONATHAN's wreck also comprises the only known and located remains of one of these vessels as modified for use as an early Pacific coastal steamer.

This statement of significance is based on the more detailed discussion which follows.

BROTHER JONATHAN'S GOLD RUSH CAREER, 1850-1857

Between December 1848 and December 1849, more than 1,000 vessels cleared world ports for California in response to the news that gold had been discovered on

the banks of the American River. While large numbers of gold seekers crossed the North American continent by foot, on horseback, or by wagon, a greater number came by sailing ship or steamer. The transportation of people was exceeded by the volume of tonnage in vessels carrying cargoes to California markets.

The California gold discovery revived a centuries old sea route linking the Pacific and Caribbean oceans as tens of thousands of gold seekers crossed the narrow breadth of Central America at Panama and Nicaragua and booked passage in ships to San Francisco. The trade was dominated at first by the Pacific Mail Steamship, on the Pacific, and the United States Mail Steamship Company, on the Atlantic, but the profits to be made on the Panama route and the seeming inability of the Pacific Mail Steamship Co. to adequately handle the large number of persons awaiting passage to San Francisco inspired a number of entrepreneurs to compete for the business of isthmian travellers.

Considerable competition to the Pacific Mail came from organizers of "opposition lines" of steamships, and proved, in the words of historian John Haskell Kemble, to be "bitter and ruthless. . . . the chief characteristic of steamship operation on the Panama route," replete with fare wars, angry denunciations and lawsuits. [1]

The earliest competitors of the Pacific Mail were the New York firm of J. Howard and Son, southern shipping magnate Charles Morgan, and the United States Mail Steamship Co., which was apparently not content with just the Atlantic side of the operation – but then the Pacific Mail was not content to operate solely in the Pacific. The feud between the U.S. and Pacific Mail resulted in both sending steamers to encroach on the

other's territory and only ended when the two companies traded the steamers plying each others' waters and exchanged stock. The two companies began cooperating with one another, selling jointly issued tickets. [2] The greatest challenge to the Pacific Mail, and indeed, the Panama Route, came from "Commodore" Cornelius Vanderbilt of New York. After trying to compete with the Pacific Mail in Panama, Vanderbilt opened a new route by way of Nicaragua.

While California-bound immigrants crossed Nicaragua as early as 1849, the heyday of the route was 1851-1855. Although wider than Panama, Nicaragua boasted the more easily navigated San Juan River and Lake Nicaragua, which supposedly made for an easier passage confined more to steamer than mule or canoe, although both were frequently employed on the Nicaragua route as well as in Panama. While hoping to take over the lucrative California trade from both the Pacific Mail and the isthmus of Panama, Vanderbilt also hoped to build a trans-isthmian canal in Nicaragua and thus capture a prize already more than a decade along in discussion and dreams.

Commencing operations in December 1850 with the steamer PROMETHEUS, Vanderbilt ordered the 613-ton sidewheel steamer INDEPENDENCE built by William H. Brown in New York for the Pacific. Launched with the engines and boilers in place and with steam up on Christmas Day 1850, Vanderbilt's new present steamed for the Pacific on January 13, 1851. Followed by the 1,003-ton sidewheel steamer PACIFIC, purchased from the United States Mail Steamship Co., INDEPENDENCE inaugurated through service on the Nicaragua route. PACIFIC arrived first, however, and in July 1851 the line officially opened. [3]

Gradually the Nicaragua route was monopolized by Vanderbilt, who employed seven steamers by early 1852. The line prospered, offering serious competition to the Pacific Mail. Although the number of passengers going by way of Nicaragua never surpassed those passing over the Isthmus of Panama, considerable business was lost to Vanderbilt; in 1851 only 4,971 passengers crossed Nicaragua as compared to 29,653 crossing Panama, but in 1852 the gap narrowed with 17,403 Nicaragua passengers to 33,108 Panama passengers, closing with 23,957 to 27,246 in 1853. [4] Part of Vanderbilt's failure to make more of Nicaragua was his inattention to passenger comfort.

Passengers protested unsanitary and unsafe conditions on the Nicaragua steamers, including a parade in San Francisco in which passengers carried a anderbilt effigy with a placard labelled "Vanderbilt's Death Line" hanging from its neck. Ill-feeling bolstered by several unfortunate disasters – the loss of the steamers NORTH AMERICA, S.S. LEWIS, and INDEPENDENCE, the latter with considerable loss of life – did little to help. The Nicaragua route all but closed when the completion of the Panama Railroad and warfare in Nicaragua engendered by the filibustering activities of Yankee adventurer William Walker plunged the country into turmoil. In 1856, only 8,053 passengers crossed Nicaragua, as opposed to the 30,335 who went by way of Panama. [5]

BROTHER JONATHAN was built for shipping entrepreneur Edward Mills by the New York firm of Perrine, Patterson & Stack. Launched on November 2, the steamer, termed "unique in her construction and her name" was reported lying at the Morgan Iron Works' wharf at the end of the month, "receiving her machinery." The New York HERALD, noting the new steamer's

construction, reported that Mill's had personally superintended the vessel's building, and had "spared neither pain not [sic] expense. . . . " [6] Mills built BROTHER JONATHAN for the Panama Route, and in early 1851 the steamer sailed for Chagres on her maiden voyage. Mill's operation of the steamer was plagued by misfortune; in November 1851, two hundred of BROTHER JONATHAN's passengers were stranded at Panama when their connecting steamer on the Pacific failed to arrive. The following voyage also failed to meet the Pacific steamer, stranding another group of BROTHER JONATHAN's passengers. The Pacific Mail Steamship Company refused to honor Mill's lesser-priced tickets, compounding the problem.

Mills hastened his own demise by at first refusing refunds and arrogantly asserting that "California passengers must admit that I have reduced the passage one half, since I commenced running the steamer Brother Jonathan; and, if they had met with some little detention on the Pacific side, which is rather beyond my control, they will, upon reflection, give me credit for some advantage to themselves. . . . " [7] Mill's business declined, and in March 1852, he sold BROTHER JONATHAN to Cornelius Vanderbilt. BROTHER JONATHAN had already operated on the Nicaragua route, making two voyages, one from Nicaragua to New York in October, and another from New York to Nicaragua in December 1851. The October voyage added to Mill's bad public relations when BROTHER JONATHAN's captain charged passengers who had missed the sailing of the steamer DANIEL WEBSTER a high fare for berths on the already overcrowded ship without adequate provisions. They arrived in New York describing BROTHER

JONATHAN as "a moving pestilence, whose putrid carcass was strewn with the dead and dying during the passage. . . . " [8]

In answer to this complaint, once Vanderbilt purchased BROTHER JONATHAN, he had the steamer's accommodations enlarged to carry as many as 750 passengers. On May 14, 1852, the rebuilt BROTHER JONATHAN sailed from New York for San Francisco, by way of Rio de Janeiro, the Straits of Magellan, Valparaiso, Chile, Panama and San Juan del Sur, Nicaragua. BROTHER JONATHAN encountered rough weather in the straits and lost two anchors and a kedge and arrived at Valparaiso short of coal and wood. The steamer reached Panama on September 3, 1852, 113 days out of New York, where she took on supplies and passengers before sailing on September 13. She reached San Juan del Sur on September 22, and finally arrived at San Francisco on October 5 to commenced [sic] a new, Pacific Coast career.

BROTHER JONATHAN began regular voyages between San Francisco and San Juan del Sur on November 1, arriving back at the Golden Gate at the end of her first round-trip run on December 3, 1852. E. S. Capron, arriving at San Francisco aboard BROTHER JONATHAN on May 21, 1853, wrote how BROTHER JONATHAN tied up at Pacific Street wharf at the end of each voyage:

> All is bustle and confusion. The mate is hoarsely giving the order to 'make fast,' and the sailors, in obedience, are busy with the ropes and cables. The wharf is crowded with the multitude, hand-carts, drays, and hacks. Many persons are pressing their way on board in search of expected friends, and the weary passengers are collecting their valuables, and preparing to bid the good steamer a joyful farewell. [9]

The previous month, Franklin Langworthy had sailed from San Francisco for home, via San Juan del Sur, aboard BROTHER JONATHAN. As the 565 passengers crowded the decks, "thousands on thousands thronged the Pacific Wharf to watch our departure. The steam had been generating for two hours, hawsers were unfastened and now taken in, the ponderous wheels began to roll, and the stately ship shot into the Bay, amidst the shouts of the passengers, responsive to the cheers of the thousands on shore." [10]

Langworthy compared BROTHER JONATHAN's saloon to the "drawing room of an imperial palace." In addition to comfort, he also praised the cuisine. "To keep up the supply of fresh meat, we have on board eight or ten beef cattle, a number of swine, besides a small lot of sheep. . . . We have plenty of potatoes, both sweet and of the common kind. Onions, lettuce &c., fresh as if just brought from the garden. Fish, fresh and salt, crabs and lobsters, fresh veal and mutton preserved in cans, geese and ducks, and other fowls kept in ice, and dried fruits and nuts are on the table at every meal." [11]

BROTHER JONATHAN made thirteen voyages to and from San Francisco and San Juan del Sur in 1853, seven in 1854, none in 1855, and two in 1856. [12] Vanderbilt sold his interest in BROTHER JONATHAN and his other steamers to his partners in the Accessory Transit Company in December 1852, just after BROTHER JONATHAN's first arrival at San Francisco. The steamer remained under the Accessory Transit Company's flag until 1857, operating for various agents. In October

1854, BROTHER JONATHAN was dispatched to southern California to bring survivors of the wrecked Accessory Transit Co. steamer YANKEE BLADE back to San Francisco. The grim assignment was a harbinger of worse days to come. In February 1856, President Rivas of Nicaragua annulled the Accessory Transit Company's charter, ending their operation on the Nicaragua Route. When she sailed in March 1856, BROTHER JONATHAN was the last of the company's steamers to depart from San Juan del Sur. [13]

BROTHER JONATHAN'S COASTAL CAREER, 1857-1865

BROTHER JONATHAN was sold in early 1856 to Captain John Thomas Wright of San Francisco, and renamed COMMODORE. Operated by Wright as part of his Merchant's Accommodation Line, COMMODORE connected San Francisco with Oregon, Washington and British Columbia ports in direct competition with the Pacific Mail Steamship Company. [14] The steamer was condemned as "bad and unseaworthy and sadly needing repairs" in November by the Port Warden of San Francisco. [15] The steamer was hauled and repaired in early 1858.

News that gold had been discovered in British Columbia on the banks of the Fraser River reached California in February 1858. The news excited many, inasmuch as the California Gold Rush-inspired boom in the state was waning. According to one contemporary historian, "the whole of California in April 1858 was in a ferment. Business in the interior was deranged, and in many placed [sic] broken up. Hundreds too impatient to wait

for the steamers mounted horses and hastened overland- . . . . While towns in the interior were being deserted, San Francisco derived the benefit of the influx and the outfitting of the miners, and the shipper rejoiced at the prospects of the Fraser trade." [16]

Returning from British Columbia, COMMODORE arrived at San Francisco on April 10, 1858 with confirmation of the discovery, sparking a new gold rush. Wright immediately advertised a sailing on April 20 "For the new gold mines on Frazer's River . . . touching at Mendocino, Trinidad, Crescent City, Port Orford, and Victoria, Vancouver's Island. . . . " [17] It was the first of several sailings north to British Columbia, a service that COMMODORE inaugurated.

The news of the sailing came to the attention of the congregation of San Francisco's African Zion Methodist Episcopal Church. Although admitted to the Union as a "free" state, California's southern democratic politicians had passed a number of restrictive laws. Blacks could not testify in court against a white man. Fugitive slaves could be arrested and sent back to slavery. This had led to a famous court case, in which slave Archie Lee successfully fought for his freedom after years in California. In the aftermath of the Lee case, the California state legislature introduced bills that banned further immigration of free blacks to the state, and ruled that any black "sojourning" in California with his master would remain a slave. In the face of further persecution, the black congregation of the church met on April 14 to debate immigration to Mexico or British Columbia.

When COMMODORE steamed for Victoria on April 20, sixty-five members of the church sailed with her. COMMODORE arrived at Victoria on April 25, with 400

passengers. She was the first American vessel to reach British Columbia with gold seekers. Dr. J.S. Helmcken, a prominent resident of Victoria, also remarked on the arrival of "black emigrants, from the 'land of the free and the home of the *slave*.' These, 'like the pilgrim fathers of old,' kneeling on the ground, prayed and blessed it as the true land of freedom and their future home. They called for blessings on the flag that floated above the fort. . . . " [18] In the next few months, some four hundred California blacks, including Archie Lee, emigrated to British Columbia. The majority settled on Saltspring Island, where their descendants live to this day. [19]

COMMODORE's regular sailings to Victoria were followed by other steamers. In July 1858, Wright purchased another Nicaragua Route veteran, the steamer PACIFIC, for the service. In all, between 1858 and 1859 there were 105 steamer arrivals at San Francisco from British Columbia. COMMODORE went out of service in 1858, however. COMMODORE was nearly lost in July 1858 while running from San Francisco to Victoria. Steaming from San Francisco on July 8 with 250 passengers and 800 tons of freight, COMMODORE ran into heavy weather and began to leak just two days out. Described as "lying in the trough of the sea, helpless," with the water a foot away from the boiler fires, COMMODORE was in danger of sinking. Captain George W. Staples threw cargo overboard, and set the passengers to bailing and pumping. One pump failed, the steam pipe cracked, and the boilers shifted in their beds as the steamer rolled in the waves. Captain Staples gave orders to shoot and throw overboard the twenty horses aboard the ship, while the engineers worked on the damaged pump. It was repaired, and as the water was slowly being freed from

the hull, a fresh breeze came up. Putting sail on and turning about, Staples drove COMMODORE before the wind and back to San Francisco, where she arrived on July 14. [20] The damaged and battered steamer was sold by Wright to the California Steam Navigation Company.

The new owners rebuilt the ship, sending her to the U.S. Navy's drydock at Mare Island on San Francisco Bay. Newspaper reports noted that "she has been thoroughly overhauled and refitted throughout. Forty thousand dollars or thereabouts, have been spent on her. She has been strengthened in every possible way and is not if anything stauncher than the day she was first launched." [21] Renamed BROTHER JONATHAN, the steamer reembarked on the north coast trade to Oregon and Washington ports in March 1859.

BROTHER JONATHAN first brought news to Oregon of the territory's admission to statehood on that voyage when she arrived at Portland on March 15, 1859. [22] The steamer continued to call at northern ports for the next six years, although her ownership changed in August 1860 when she was sold to the Oregon & San Diego Steamship Line of Samuel J. Hensley. Occasionally steaming from San Francisco to southern California ports, BROTHER JONATHAN and her running mate PACIFIC more regularly operated on the northern run. "The ships of these companies were literally the commercial arteries of the Pacific Coast economy, carrying vital products of mine, forest, farm and factory to expanding consumption centers extending from California to British Columbia." [23] The trade with Oregon was so busy that "cargoes piled up at the terminal to such an extent that the Oregon-bound steamers were compelled to leave considerable tonnage behind on each voyage." [24] The burden of the trade was such that in

May 1861 BROTHER JONATHAN was hauled out at North's Shipyard on San Francisco's North Beach for a rebuild.

BROTHER JONATHAN returned to service on the San Francisco-Portland-Victoria run in December 1861 as "the new and splendid steamship BROTHER JONATHAN built expressly for this route with unequalled accommodations for passengers and freight." [25] In this last stage of her career, BROTHER JONATHAN also participated in the 1861-1862 rush for gold on Idaho's Salmon River. The discovery of gold in what would become Idaho and Montana in summer of 1860 led to a rush to those areas, reached by navigating the upper reaches of the Columbia River. A fierce winter in 1861-1862 disrupted the rush, but by the spring of 1862 it was back on. BROTHER JONATHAN's regular sailings up the Columbia brought large numbers; on one voyage alone, the steamer carried nearly a thousand gold seekers to Portland, the jumping off point for the mines. [26] Gold rush boom voyages notwithstanding, BROTHER JONATHAN operated for the next three and a half years without serious incident, except for a collision with the barque JANE A. FALKENBERG on the Columbia River in June 1865 resulted in some damage that was repaired in San Francisco.

THE WRECK OF BROTHER JONATHAN

BROTHER JONATHAN sailed from San Francisco on July 28, 1865 under the command of Captain Samuel J. DeWolf, with 244 passengers and crew and a large freight that allegedly overloaded the steamer. The cargo included an ore crusher and Arriving off Crescent City on the afternoon of July 30, BROTHER JONATHAN was

wrecked off St. George Reef, also known as the Dragon's Teeth, on a submerged pinnacle now known as "Jonathan Rock."

According to the quartermaster, one of the few survivors,

> I took the helm at twelve o'clock. A northwest gale was blowing and we were four miles above Point St. George. The sea was running mountains high and the ship was not making headway. The captain thought it best to turn back to Crescent City and wait until the storm had ceased. I ordered the helm hard aport. I obeyed and it steadied her. I kept on due east. This was about 12:45. When we made Seal Rock the captain said southeast by south. It was clear where we were, but foggy and smoky ashore. We ran until 1:50 when she struck with great force, knocking the passengers down and starting the deck planks. The captain stopped and backed her, but could not move the vessel an inch. She rolled about five minutes, then gave a tremendous thump and part of the keel came alongside. By that time the wind and sea had slewed her around until her head came out of the sea and worked off a little. Then the foremast went through the bottom until the yard rested on deck. [27]

Six lifeboats were launched, but only one made it away from the ship. The others were crushed or capsized.

The boat that made it away carried nineteen people; third mate James Patterson, ten crew, and five women and three children. [28] Quartermaster Jacob Yates, in the lifeboat, reported "as we came around the stern we saw a boat swamped which was full of women; and one boat

capsized, with a man on her bottom, and also another one stove to pieces. Our boat was so full we could not take another soul in it." [29]

Within 30 to 45 minutes after striking, BROTHER JONATHAN sank. A number of the passengers and crew remained below and went down; others struggled on the water but drowned. Among the passengers were a number of prominent citizens; Anson C. Henry, Governor of the Washington Territory, Brig. Gen. George Wright, newly named commander of the Army's Department of the Columbia, and James Nesbit, editor and part owner of the San Francisco DAILY EVENING BULLETIN were all lost. Also drowned were Victor Smith, former Collector of Customs at Puget Sound, and Captain Chaddock of the Revenue Cutter *Joseph Lane*. News of the disaster quickly spread up and down the coast and back east, where it received headlines in Washington, D.C. and New York. In terms of lives lost, and the social impact of the near-complete loss of life and the many prominent citizens among the dead, the wreck of BROTHER JONATHAN was the worse maritime disaster in California history, and one of the worse shipwrecks on the Pacific Coast.

A $200,000 Army payroll, $80,000 in specie, and other monies were also lost. Forty-five bodies and lo[illegible]e wreckage drifted ashore after the wreck, but despite several searches inspired by the lost money aboard the ship, the wreck of BROTHER JONATHAN was not discovered until 1993. The bodies recovered from the sea were buried ashore; they were later relocated and a special cemetery was established in Crescent City. The site is now a California Registered Landmark.

FOOTNOTES, SECTION 8

1
John Haskell Kemble, *The Panama Route, 1848-1869* (Berkeley and Los Angeles: University of California Press, 1943) p. 46.

2
Ibid., p. 51.

3
David I. Folkman, Jr., *The Nicaragua Route* (Salt Lake City: University of Utah Press, 1973) and Kemble, *The Panama Route*, pp. 58-77, *pass.*

4
Ibid., p. 163.

5
Ibid.

6
New York HERALD, November 27, 1850.

7
New York HERALD, December 1, 1851.

8
Ibid.

9
E.S. Capron, *History of California* (Boston: John P. Jewett & Company, 1854), pp. 331-332.

10
Franklin Langworthy, *Scenery of the Plains, Mountains and Mines*, ed. Paul C. Phillips. (Princeton: Princeton University Press, 1932), p. 214.

11
Ibid., pp. 217-218.

12
Folkman, *The Nicaragua Route*, pp. 147-150.

13
Kemble, *The Panama Route*, p. 74.

14
Humboldt TIMES, March 28, 1857.

15
Humboldt TIMES, November 28, 1857.

16
Hubert Howe Bancroft, *History of British Columbia, 1792-1887*. (San Francisco: The History Company, 1890), pp. 357-358.

17
San Francisco DAILY ALTA CALIFORNIA, April 20, 1858.

18
J. S. Helmcken, *The Reminiscences of Doctor John Sebastian Helmcken*. ed. Dorothy Blakey Smith. (Vancouver, B.C. 1975), p. 338.

19
F.W. Howay, "The Negro Immigration into Vancouver Island in 1858," *British Columbia Historical Quarterly*, III (1939), p. 113.

20
Crescent City HERALD, July 28, 1858.

21
Crescent City HERALD, March 16, 1859.

22
Alfred L. Lomax, "Brother Jonathan: Pioneer Steamship of the Pacific Coast," *Oregon Historical Quarterly*, LX (3), September 1959, p. 338.

23
Ibid., p. 339.

24
Ibid., p. 341.

25
San Francisco DAILY ALTA CALIFORNIA, December 15, 1861.

26
Arthur L. Throckmorton, *Oregon Argonauts: Merchant Adventurers on the Western Frontier*. (Portland: Oregon Historical Society, 1961), p. 249.

27
Victoria (B.C.) TIMES COLONIST, August 16, 1865.

28
San Francisco DAILY ALTA CALIFORNIA, August 2, 1865.

29
Ibid.

SECTION 10 – GEOGRAPHICAL DATA

Brother Jonathan
Del Norte, California

The actual site of the shipwreck Brother Jonathan comprises the area of a circle from the center of the wreckage extending out approximately 300 feet. The 19.5 acre site (a circle with a radius of 5,200 feet with a

center point at coordinates 41 degrees, 46 minutes, 29 seconds, North Latitude, by 124 degrees, 20 minutes, 50 seconds, West Longitude) is the area of a protective zone established by the United States District Court for the Northern District of California, in the case of *Deep See Research v. Brother Jonathan,* No. C 91 3899 LCB. The exact location of the Brother Jonathan wreck site is known to only a few individuals who have declined to reveal it even to the Court. They have provided the above coordinates to the Court, but the center point of those coordinates is not necessarily the actual location. Attached hereto is the sworn Declaration of Mark Barnum which attests that the wreck is within the protective circle.

DECLARATION OF MARK BARNUM

STUART M. GORDON, #037477
FLETCHER C. ALFORD, #152314
GORDON & REES
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Telephone: (415) 986-5900

Attorneys for Plaintiff
DEEP SEA RESEARCH, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEEP SEA RESEARCH, INC., Plaintiff, v. THE BROTHER JONATHAN, her appurtenances, furniture, cargo, etc., Defendant. / STATE OF CALIFORNIA, STATE LANDS COMMISSION, Intervenor. /	No. C 91 3899 LCB DECLARATION OF MARK BARNUM ACCOMPANYING PAPER: PLAINTIFF DEEP SEA RESEARCH, INC.'S PROPOSED GEOGRAPHIC COORDINATES OF SALVAGE AREA SUBJECT TO PRELIMINARY INJUNCTION

GOVERNMENT OF THE UNITED STATES OF AMERICA,

Intervenor.

_____/

I, MARK BARNUM, declare:

1. I am the owner of ATAR Company, a business that specializes in marine geodetic surveying and precision navigation.

2. I have personal knowledge of the matters stated in this declaration, and could competently testify to them if called as a witness.

3. I was retained by DEEP SEA RESEARCH, INC. to provide precision navigation in support of its efforts to locate the wreck of the *Brother Jonathan*. I was present on-site at the time plaintiff DEEP SEA RESEARCH, INC. discovered the wreck of the *Brother Jonathan*. I am familiar with the process of ascertaining and calculating geographic coordinates. At the time DEEP SEA RESEARCH, INC. located the wreck of the *Brother Jonathan*, I calculated the geographic coordinates of the wreck.

4. The wreck of the *Brother Jonathan* is located within an area described as a circle, with a radius of 5,200 feet (i.e., a diameter of 10,400 feet), having its center point at the geographic coordinates 41 degrees, 46.29 minutes North, and 124 degrees, 20.50 minutes West. Attached hereto as Exhibit "A" is a true and correct copy of a diagram I prepared which depicts the above-described area.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: March 30, 1995 /s/ Mark Barnum
MARK BARNUM

_____

EXHIBIT A
TO DECLARATION OF MARK BARNUM

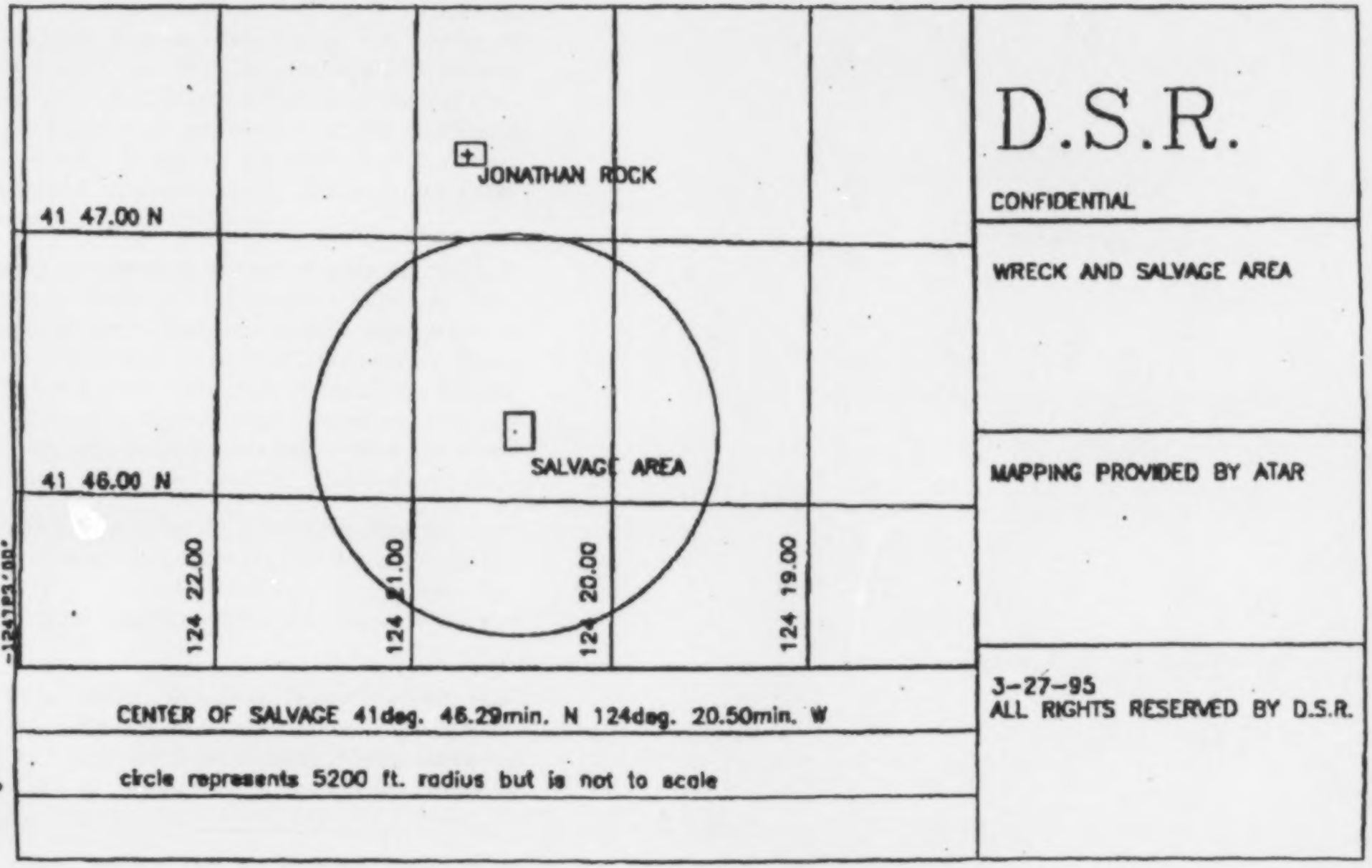


Exhibit A
AF - 00027

BROTHER JONATHAN SHIPWRECK SITE NATIONAL HISTORIC REGISTER NOMINATION

PHOTOGRAPHS/VIDEO

1. San Francisco waterfront as of 1863, from Telegraph Hill: Probably the Broadway and Vallejo St. Wharves. Sidewheel steamer Brother Jonathan at top center of picture. From files of the San Francisco Maritime National History Park, California Historical Society Collection. Reproduced with permission of the California Historical Society. Name of photographer and date unknown. Original negative (A 12.15,237n) San Francisco National Maritime Museum.

2. Photograph (original in color) of painting of S.S. Brother Jonathan: Name of Photographer unknown. Date of photograph unknown. Believed to be a photograph of Oil Painting "Brother Jonathan" by James Bard (1815-1897), dated 1851, collection of the Griswald Inn, Essex, Connecticut. Original photo negative (J7, 23, 657n) San Francisco National Maritime Museum. Used with permission. Please see test 7-1 and footnote 7-2.

3. Photograph of painting of Steamship Brother Jonathan, Names of artist and photographer unknown. Original negative (p78-140a) Doris Chase Collection, San Francisco National Maritime Museum. Used with permission.

4. Video, "The Brother Jonathan Found", 10/93, provided by Donald Knight and Larry Patin, Copyright by Larry Patin and used with permission. Video taken on site of the wreck in October 1993. Credits are listed on the video.

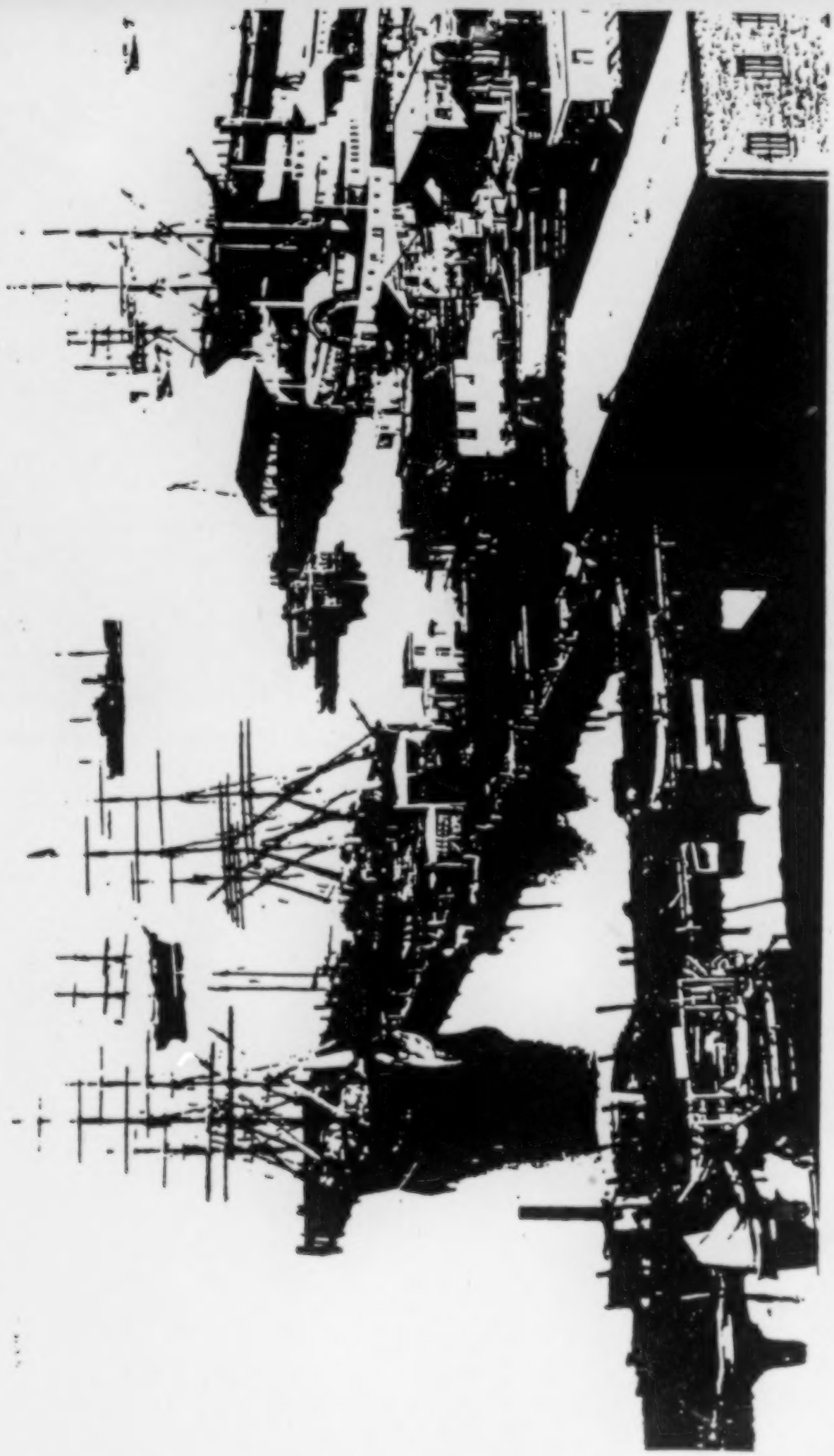
5. Freeze frame photograph taken from video, The Brother Jonathan Found., depicting the port paddlewheel

shaft and hubs. Fish net caught on hull is draped over wreck in upper right of picture.

6. Freeze frame photograph taken from the video, The Brother Jonathan Found, depicting the steam cylinder built by Morgan Ironworks of New York and installed in the Brother Jonathan with the rebuilt engine from the wrecked steamer Atlantic.

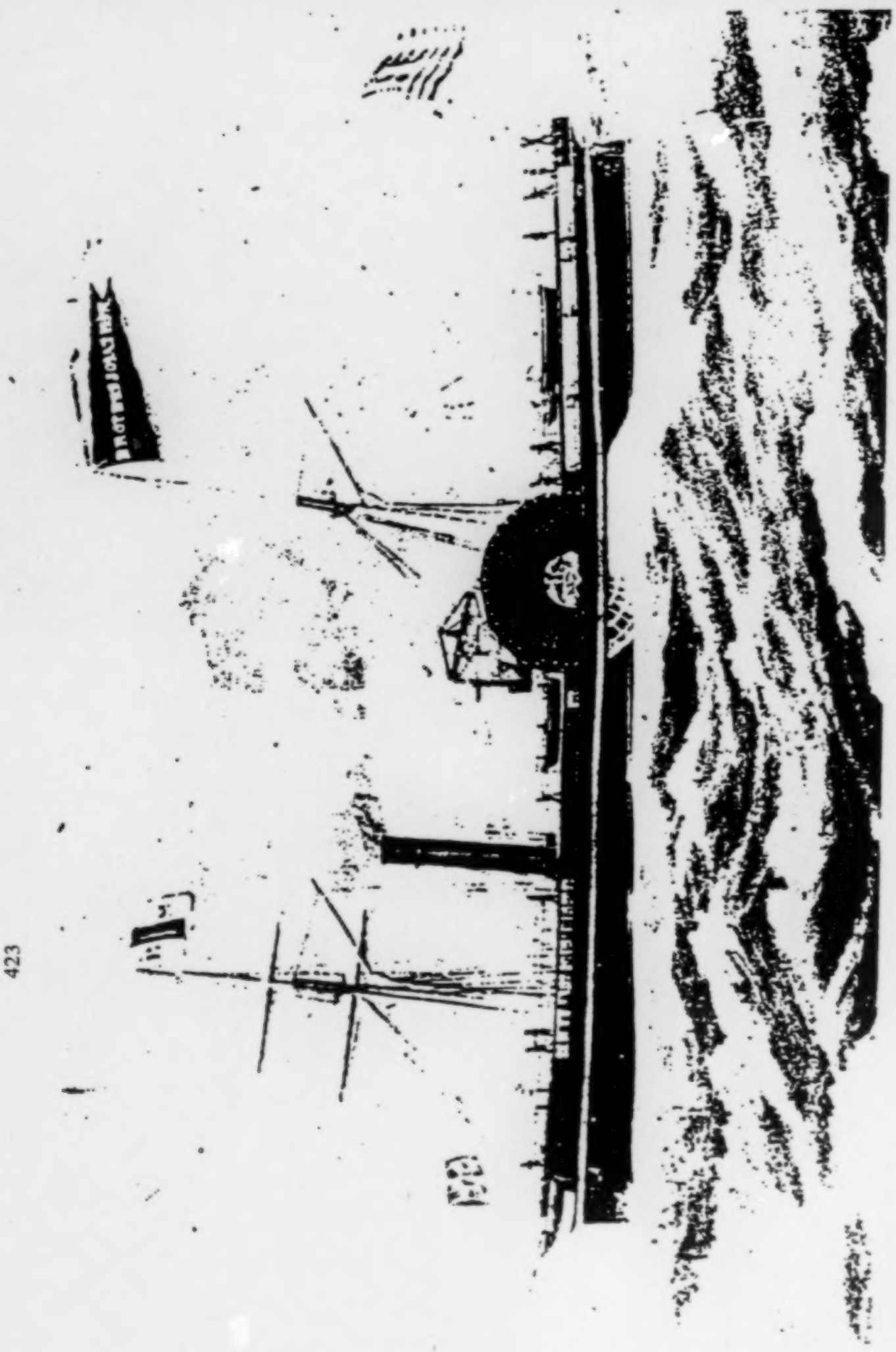
7. Freeze frame photograph taken from the video, The Brother Jonathan Found, depicting dishes and other crockery scattered and partially buried in the area surround the wrecked hull.

8. Freeze frame photograph taken from the video, The Brother Jonathan Found, depicting the artifacts recovered from the wreck during the 1993 dives. The item in the photograph beginning with the lower left and proceeding clockwise are: A bottle cork intact, filled with liquid with a small air space visible under the cork; a white glazed plate, 7 and ⅜ inches in diameter, made by Bridgewood and Clark; one brass fastener with wood attached, 6 and ½ inches long; a medicine bottle without stopper, glass cracked, bottle intact, embossed with "J.W. Hunnewell & Co. Boston"; a clay "ale" bottle without stopper, intact, impressed with the letters "HERZOGTHUM NASSAU".



422

AF - 00029



423

AF - 00030

AF - 00031





AF - 00032



426

AF - 00033



427

AF - 00034



EXHIBIT B
TO AFFIDAVIT OF CHERILYN E. WIDELL

LAW OFFICES
GORDON & REES
TWENTIETH FLOOR
EMBARCADERO CENTER WEST
275 BATTERY STREET
SAN FRANCISCO, CALIFORNIA 94111
(415) 986-5900

FAX (415) 386-8054
FAX (415) 296-9287

FAX (415) 677-9673
FAX (415) 386-8630

SOUTHERN CALIFORNIA OFFICE
501 W BROADWAY
FOURTEENTH FLOOR
SAN DIEGO, CALIFORNIA 92101
(619) 696-6700
FAX (619) 696-7124

FLETCHER C. ALFORD

August 11, 1995

VIA HAND DELIVERY

Honorable Members of the California
State Historic Resources Commission
State of California
Sacramento, CA

Re: *Deep Sea Research, Inc. v. The Brother Jonathan*
U.S.D.C. N.D. Docket Number:
CV-91-03899-LCB

U.S. Court of Appeals Docket
Number: 95-15693

To: The Honorable Members of the
California State Historic Resources Commission

1. INTRODUCTION

I am an attorney for Deep Sea Research, Inc. ("DSR"), the owner and salvor of the shipwrecked vessel *Brother Jonathan*.

The founders of DSR have been searching for the *Brother Jonathan* for two decades, at a cost to them of more than a half-million dollars of their funds. Their efforts and industry were finally rewarded in October of 1993, when they discovered the wreck approximately four and one-half miles off the coast of Crescent City, California, resting upright on the sea floor in approximately 250 feet of water. Until that time, neither the State Lands Commission ("SLC") nor anyone else knew of the wreck's location. *See* Transcript of testimony of Senior State Archaeologist John W. Foster before the United States District Court, attached hereto as Exhibit "A", at pg. 44, line 15, and pg. 46, lines 5 through 25.

Several insurance companies paid claims for loss of the vessel and its cargo. Those insurance companies obtained title to the vessel and its cargo by operation of law, under principles of subrogation. They recently conveyed that title to DSR through a written contract. *See* Agreement Relating To Assignment Of Title, etc., attached hereto as Exhibit "B". Accordingly, DSR is now the owner of the vessel and its cargo.

DSR has retained an experienced marine archaeologist to supervise and oversee its work on the *Brother*

Jonathan. *See* Curriculum Vitae of James R. Reedy, Jr., attached hereto as Exhibit "C". That archaeologist has prepared a detailed, comprehensive plan for recovery of the vessel by DSR. *See* Preliminary Research Design, etc., attached hereto as exhibit "D". Already, DSR has completed extensive archaeological surveying and mapping of the wreck site. It is now making final arrangements to begin recovery work immediately.

As explained in more detail below, the United States District Court has directed DSR to immediately begin recovery of the *Brother Jonathan*. The Court also found that the SLC has *no colorable claim whatsoever* to the wreck. Accordingly, the SLC's representation, in its nomination form, that it "owns" the *Brother Jonathan* is a blatant misrepresentation of the facts.

For each of the reasons set forth below, nomination of the *Brother Jonathan* is clearly inappropriate under these circumstances, and DSR respectfully requests that this Commission take no action on the nomination. If the Commission decides to act on the nomination, DSR asks that the nomination be denied.

2. BY ITS NOMINATION, THE SLC ATTEMPTS TO ENLIST THIS COMMISSION IN ITS EFFORTS TO SUBVERT AN ORDER OF THE UNITED STATES DISTRICT COURT AND INTERFERE WITH THE OUTCOME OF PENDING LITIGATION

Article III, Section 2 of the United States Constitution vests the federal courts with *exclusive* jurisdiction of disputes with regard to ownership of shipwrecked vessels. Accordingly, DSR brought an action in the United

States District Court for the Northern District of California to confirm its title and/or salvage rights to the *Brother Jonathan*. The action is entitled *Deep Sea Research, Inc. v. The Brother Jonathan*, Case No. C 91 3899 LCB.

The SLC intervened in the action, asserting that it has title to the *Brother Jonathan* under the Abandoned Shipwreck Act of 1987 ("ASA"). As you may know, the ASA provides that the states have title to a limited class of shipwrecks that are abandoned, embedded in the sea floor, and either listed in the National Register or determined to be eligible for listing in the Register.

On March 15, 1995, after an evidentiary hearing, the United States District Court issued a lengthy memorandum and order denying the SLC's claim of title to the vessel. *See* March 15, 1995 Memorandum and Order, attached hereto as Exhibit "E". As you will note from the Memorandum, the Court found that the *Brother Jonathan* does not meet any of the criteria set forth in the ASA. The Court ruled that the vessel is not abandoned, because insurance companies obtained title to the vessel and they have conveyed that title to DSR. *See* March 15 Memorandum, at pg. 12 *et seq.* The Court also ruled that the vessel was not imbedded in the sea floor (see *id.* at pg. 22 *et seq.*), *and that it is not listed in, or eligible for listing in, the National Register* (see *id.* at pg. 25 *et seq.*). The Court rejected the SLC's claim that the *Brother Jonathan* is "historically significant", noting that, although the SLC has known about the wreck for many years, it had never done anything, as of the date of the Court's order, to nominate the wreck for listing in the National Register. *Id.* at pgs. 26-28.

Accordingly, the Court ruled that the ASA does not apply to the *Brother Jonathan*, and that the SLC *has no colorable claim to the wreck, Id.* at pg. 29. The Court then appointed DSR exclusive salvor of the wreck, and ordered DSR to salvage the vessel and its cargo and take the same into DSR's possession. *Id.* at pg. 37 *et seq.*

The SLC then appealed to the Ninth Circuit Federal Court of Appeals. That appeal is currently pending. About that same time, the SLC also submitted this nomination to the Commission.

The SLC then brought a motion asking the District Court to delay all salvage work on the wreck until its appeal has been decided and this nomination has been acted upon. The Court denied that motion, concluding that the SLC's chances for success on its appeal are "minimal." *See* July 13, 1995 Memorandum and Order, attached hereto as Exhibit "F", at pg. 7. The Court also ruled that there is no risk that DSR's recovery work will impair any archaeological or historical values of the property, because it will be done under the Court's auspices and pursuant to appropriate archaeological practices. *Id.* at pgs. 11-13. Furthermore, the Court ruled that a stay of salvage activities would not be ordered while the SLC seeks to nominate the wreck for listing in the National Register, because the SLC has unreasonably delayed in seeking such a nomination, and because the eligibility of the wreck is "speculative, at best." *Id.* at pg. 18.

The Court noted that the wreck is in grave danger of being covertly pillaged by unscrupulous third parties; accordingly, the Court directed DSR to begin recovering the wreck immediately. *Id.* at pg. 13 *et seq.* As noted above, DSR is making final preparations for immediate

commencement of recovery work pursuant to the Court's directive.

The SLC's nomination of the *Brother Jonathan* under these circumstances is clearly inappropriate. The nomination is a blatant attempt by the SLC to thwart the Court's order and influence the outcome of the pending litigation. Article III, Section 2 of the United States Constitution provides that controversies regarding ownership of shipwrecks are exclusively within the jurisdiction of the federal courts. In this case, the federal court has exercised its jurisdiction over the matter by determining that the wreck does not belong to the SLC, is not appropriate for listing in the National Register, and should be salvaged immediately. This Commission should not accept the SLC's invitation to intrude upon the Court's exclusive jurisdiction and become involved in the matter at this late date. The SLC has lost in the District Court, and this Commission does not have the authority to reverse that decision. Accordingly, DSR respectfully requests that the Commission take no action on the nomination at this time.

3. IF THE COMMISSION DECIDES TO TAKE ACTION ON THE NOMINATION, DSR MUST BE ACCORDED FULL DUE PROCESS, INCLUDING THE OPPORTUNITY TO PRESENT WITNESSES AND EVIDENCE, AND THE RIGHT TO CROSS-EXAMINE THE SLC'S WITNESSES

The Fourteenth Amendment to the United States Constitution provides that, "No State . . . shall deprive any person of life, liberty, or property, without due process of law." Thus, if an administrative proceeding

could result in a party being deprived of a property interest, the administrative proceeding must be structured in such a way as to afford the party a full evidentiary hearing including the right to confront and cross-examine witnesses under oath and to produce evidence. *Paskaly v. Seale* (9th Cir., 1974) 506 F.2d 1209; *Hornsby v. Allen* (5th Cir., 1964) 326 F.2d 605.

Normally, nomination of property for listing in the National Register does not implicate due process considerations, because such action does not threaten to deprive the owner of title or other rights in the property. However, that is not true in this case. Here, the SLC is clearly utilizing the nomination in an attempt to reverse the Court's order and wrest title of the wreck away from DSR; the SLC's claim of title is premised upon the ASA, and the ASA applies only to wrecks that are listed or determined to be eligible for listing in the National Register. Thus, because the Commission's action on this matter clearly threatens to deprive DSR of its property interests in the *Brother Jonathan*, the Due Process Clause is triggered and DSR must be afforded a full evidentiary hearing on the nomination, including the right to confront and cross-examine witnesses under oath, and the right to produce evidence on its own behalf.

4. BECAUSE THE *BROTHER JONATHAN'S* LOCATION IS NOT SET FORTH IN THE NOMINATION, AND INDEED IS NOT KNOWN TO THE SLC, THE WRECK IS NOT ELIGIBLE FOR LISTING IN THE NATIONAL REGISTER

When Senior State Archaeologist John W. Foster was questioned by the Court in March as to why the SLC

had never previously moved to nominate the *Brother Jonathan* for listing in the National Register, Foster replied that such a nomination was not possible because the SLC does not know the precise location of the wreck. See Transcript of Hearing, attached hereto as Exhibit "A", at pg. 46, lines 10 through 25.

However, that did not stop the SLC from moving to nominate the wreck several months later – despite the fact that it had not received any new information regarding the wreck's location in the interim.

The two nomination form submitted by the SLC prove unmistakably that the SLC does not have any accurate information regarding the location of the wreck. The first nomination form, submitted in May of this year, asserts that the vessel is resting at the immediate base of Jonathan Rock, and is broken into three pieces. See May 24, 1995 Nomination Form, attached hereto as Exhibit "G", at section 7.

In the revised nomination form, submitted in July of this year, the SLC asserts that the vessel is "intact", is resting in one piece, and is a "well-preserved structure." See July 5, 1995 Nomination Form, attached hereto as Exhibit "H", at pgs. 7-1 through 7-3 and pg. 8-1. Furthermore, recognizing that its earlier data regarding the location of the wreck was erroneous, the SLC now simply says that the wreck rests several miles from Jonathan Rock, somewhere within a circular area one mile in radius (i.e., two miles in diameter). See *id.* at pg. 10-1. The SLC concedes that it has no information as to where within that two-mile-diameter circle the wreck is actually located. See *id.* at pg. 10-1.

In short, the nomination forms reveal a fundamental lack of information with respect to the basic condition of

the wreck, or even its location. Without such information, the wreck cannot possibly be nominated, or determined eligible for listing, in the National Register. Accordingly, if the Commission decides to reach the merits of the nomination, DSR respectfully requests that the nomination be denied on this basis.

5. BECAUSE THE *BROTHER JONATHAN* WILL BE SALVAGED AND RECOVERED IN THE IMMEDIATE FUTURE, AS DIRECTED BY THE COURT, IT IS NOT AN APPROPRIATE CANDIDATE FOR LISTING IN THE NATIONAL REGISTER

As previously noted, the United States District Court has directed DSR to immediately begin salvage and recovery of the *Brother Jonathan*. Pursuant to the Court's direction, DSR is making the final preparations to immediately begin salvage and recovery of the wreck. Within the next several months, the wreck, or at least substantial portions thereof, will have been removed from the site described in the Nomination Form. Accordingly, Nomination of that site would be a futile, pointless, and inappropriate exercise. For this reason, DSR respectfully submits that, if the Commission decides to reach the merits of the nomination, the nomination should be denied.

CONCLUSION

The SLC's nomination of the *Brother Jonathan* is a blatant attempt by the SLC to circumvent an order of the United States District Court. In effect, the SLC is asking this Commission to reverse the decision of the District Court. That is not an appropriate function for the

Commission. Disputes regarding title to shipwrecks are within the exclusive jurisdiction of the federal courts. The Commission should decline the SLC's invitation to encroach upon the Court's exclusive jurisdiction over this matter. DSR respectfully requests that the Commission take no action on the nomination.

However, if the Commission decides to reach the merits of the nomination, the 14th Amendment to the United States Constitution requires that DSR be afforded a full evidentiary hearing, with the opportunity to confront and cross-examine witnesses under oath and the right to present evidence in support of its position.

If, after providing DSR with a full opportunity to be heard, the Commission decides to rule upon the merits of the nomination, it should reject that nomination. The nomination forms submitted by the SLC display a fundamental lack of information with regard to the basic condition of the wreck – or even its location. Without that essential information, the wreck cannot be listed in, or determined eligible for listing in, the National Register.

Finally, DSR is making final preparations to begin an immediate, full-scale salvage and recovery of the wreck, as directed by the Court. Under these circumstances, nomination would be a futile, pointless, and inappropriate exercise. For this reason, too, the nomination should be denied.

Respectfully submitted,

GORDON & REES

/s/ Fletcher C. Alford
Fletcher C. Alford

FCA:lmh
Encl.

Exhibit D

PRELIMINARY RESEARCH DESIGN FOR RECOVERY OF CULTURAL MATERIAL FROM THE STEAM VESSEL BROTHER JONATHAN

prepared for

Deep Sea Research, Inc.
1852 Circo Del Cielo Drive
El Cajon, CA
92020

by

R2 Underwater Consultants
P.O. Box 1956
Morehead City, NC
28557

(919) 247-6744

INTRODUCTION

The firm of Deep Sea Research (DSR) has been awarded custody of a shipwreck identified as the remains of the side-wheel steam vessel *Brother Jonathan* off Cresent City, California. The wreck lies upright and exposed in approximately 250 feet of water.

The following document describes the equipment and methods proposed by DSR for the mapping of and recovery of specific intrinsically valuable cultural materials from the wrecksite.

This document constitutes a research design only. It is possible that some of the methods and/or objectives listed may not prove feasible after on-site investigation,

therefore, changes in the proposed objectives may be forthcoming.

Brother Jonathan is believed to have carried a considerable amount of gold coin at the time she sank. As a for-profit company, one of DSR's main objectives is the recovery of the safe and strongboxes which contain that material. At the same time, DSR wishes to protect the integrity of the site and recover the maximum possible information from it.

To that end, all underwater operations will be conducted using approved archaeological technique and provenance recording. *In situ* recording will be accomplished via divers helmet cameras and/or other camera units (see *PHOTOGRAPHIC SUITE*). Artifacts will be retrieved using the utmost care, or left on the site in their original locations. Recovered artifacts will be treated according to approved preservation and conservation techniques.

R2 Underwater Consultants is of the opinion that removal of any intrinsically valuable material (i.e., the gold coins) from the wreck will remove most of the incentive for third party interlopers to attack and damage the site (see *SITE SECURITY*).

PROJECT OBJECTIVES

To examine and accurately map the shipwreck thought to be *Brother Jonathan*.

To recover specific intrinsically valuable cultural material from the wreck using approved archaeological methods and techniques.

To interpret the collected data in terms of the known history of the ship and her era, and to publish the results in appropriate scientific and popular literature.

ORDER OF EVENTS

Preliminary fly-over of the site for orientation and survey for possible transponder positioning.

Pre-disturbance video survey and still photography for establishment of a photogrammetric mosaic.

Testing of pre-determined areas to establish the condition of the wreck, extent of damage to the hull, orientation of the hull (bow/stern, direction of longitudinal axis), and the extent of any artifact scatter or debris field around the site.

Recovery of specific cultural material from selected areas of the wreck.

Publication of project results.

MAPPING STRATEGIES

Video footage has revealed that the wreck is essentially intact and standing clear of the bottom, however a substantial portion of the superstructure appears to be gone. Considerable damage has been inflicted on the wreck by commercial fishing operations, and several large nets are still attached to and floating above it. Removal of some or all of these nets will probably be attempted in the early phases of underwater operations.

The foremost mapping objective should be a pre-disturbance site survey and a still photography photogrammetric mosaic. Video recording will be used in the

pre-disturbance survey and will continue to play a large part in data collection on this site.

Objectives of the pre-disturbance survey are: 1) delineation of the site proper via visible, identifiable components (paddlewheels, anchors, windlass, funnel, etc.); 2) establishment of site boundaries via determining the extent of associated wreck debris outside main wrecksite; 3) establishment of the locations of stationary objects for use as possible datum points during the mapping and recovery phases; OR 4) establishment of a baseline using the longitudinal axis of the vessel between fixed datum points outside the wreck from which features within the wreck can be plotted; 5) analysis of the extent of damage and contamination of the site from the wrecking process and post-wrecking intrusions (commercial fishing gear, anchors, dumped material, etc.); 6) removal of surface-covering sediments to allow clear identification of features in the photogrammetric mosaic.

Mapping of individual features will most likely entail placement of a scale of known dimension at the feature to be recorded, and videotaping the feature and scale together. An alternative method currently being investigated is the use of dual calibrated lasers synchronized with the divers helmet cameras or with the external cameras on the submarine. Accurate positioning will be accomplished using the Trackpoint II and DGPS systems described below.

EQUIPMENT

Surface Platform

Although a specific vessel for surface support has not yet been selected, several are under consideration.

The final choice will be a craft of between 140 and 180 feet in length with room to house the below listed equipment and requisite personnel.

Electronics Package

The on-board electronic navigation and positioning equipment will include:

Trimble 4000 DL and RL survey grade DGPS receivers
Accqpoint RTCM104 correction receiver
486 PC with multi-port capability, Hydro-Nav positioning and data processing software
HP 7550A plotter for real time and post-processing of positions and recorded data
HP Desk Jet printer for real time logging
Helm display and remote keyboard for use during survey operations

Additional Electronics

Other electronic equipment includes:

Model 606 EDO 100 Khz side scan sonar
Model 700SS side scan sonar with recording capability and navigation control
EDO 20-inch flat bed recorder with 3-channel capability
2-channel DAT recorder for post-processing and archiving of data
Model G-866 EG&G proton precession magnetometer
486 PC with proprietary software for real time 3-dimensional plotting of magnetic anomalies
EG&G Unimag high resolution magnetometer
Dalton Research gradiometer

Subsurface Craft

The primary underwater vehicle will be the submersible *Delta*, operated by Delta Oceanographics, Inc. of Ventura, CA. This craft is equipped with exterior lights, manipulator arms, exterior camera mounts, and a "duster" prop for light sediment removal. A second, similarly equipped submarine may also be used.

A Fathom 500 ROV (Remotely Operated Vehicle) will be employed for specific tasks that do not require use of divers or of the sub.

Both the submarines and the ROV use an O.R.E. Trackpoint II acoustic navigation system. The ORE has a sub-mounted transponder and computes range and bearing from the surface vessel by time and signal strength across three receive transducers.

Use of the submarine will also allow archaeologists to assess the site at close range throughout the course of the project.

Photographic Suite

Delta is equipped with an externally mounted Photosea 35mm camera with a laser spotting dot feature and strobe flash. This unit has a 200-shot magazine and will be used for the photomosaic.

Video equipment includes an externally mounted Sony TR-81 Color Hi8mm camera equipped with precisely aligned parallel lasers for performing video photogrammetry "on the fly." An internal Sony TR-101 for filming through the observation ports is also available.

In addition, divers using standard hard-hat gear will be equipped with helmet-mounted cameras for recording each step of the recovery process.

Video images from all sources will be monitored aboard the surface platform. On board monitoring equipment has the capability to intake and enhance individual video frames. Instrument input can be programmed into each video frame to record such information as time, depth, water temperature, and salinity.

Diving Systems

During the recovery phase, it may be found necessary to put divers on the site. In that case the requisite personnel, saturation systems, decompression chambers and other equipment will be provided by Global Marine, Inc. of Seattle, WA.

Excavation Equipment

Since the wreck appears to be standing clear of the bottom, is not embedded in the sea floor, and has only a light deposit of silt over it, no excavation equipment other than Delta's "duster" prop is expected to be necessary.

In the event that this is not feasible in specific areas, a water induction dredge and/or artificial current device may be employed to clear sediments so that mapping may proceed.

EXCAVATION AND RECOVERY

All excavation and recovery will be performed under the direction of experienced, qualified archaeologists supplied by R2 Underwater Consultants. Excavation and recovery procedures will follow systematic, approved archaeological method. Since the wreck is standing above the sea floor and is not buried or embedded in the bottom, many of the more destructive methods normally used in underwater excavation (airlifting, trenching, etc.) may not apply.

Site-specific procedures will be developed according to conditions. Individual areas will be delineated by 1.5 meter (or larger) grids before excavation takes place. Removal of wreck material will be done primarily by the submarines.

Cultural material will be retrieved only after having been plotted and photographed or videoed *in situ*. The use of scoops and mesh screens designed to fit the submarine manipulator arms is currently being investigated, as well as coating the mechanical fingers to improve their grip and avoid damage to artifacts.

Concern has been voiced over the possible presence of human remains within the wreck. In the opinion and experience of R2 Underwater Consultants, the probability of such material remaining within the ship is minimal in the extreme. Given the circumstances under which *Brother Jonathan* was lost, crew amd [sic] passengers would have been topside in the final moments of the disaster, trying to reach the ship's boats or save themselves by grabbing pieces of flotsam. They would not have trapped themselves below decks to be drowned. Even had they done so, the unembedded condition of the wreck would have afforded ample opportunity for marine

organisms to totally devour the remains, and nothing would be left.

However, in the extremely unlikely event that human remains were to be encountered, they would be treated with the same care and respect afforded any such material found on a terrestrial site.

ARTIFACT CONSERVATION

Material will be held in proper wet storage aboard the recovery vessel or at a suitable shore facility until it can be safely transported. Artifacts recovered from *Brother Jonathan* during the location and identification phase were conserved at Belle-Chasse Laboratories of Belle-Chasse, Louisiana, a reputable, experienced firm in the field of conservation of artifacts from submerged cultural sites. Belle-Chasse will probably be contracted to conserve additional materials recovered from the site.

SITE SECURITY

Recent court proceedings and the subsequent publicity regarding ownership of *Brother Jonathan* and her cargo have attracted the attention of numerous individuals in the salvage, recreational, and "technical" diving communities. Whereas in the past, relatively deep sites such as *Brother Jonathan* were beyond the reach of most divers, advances in diving technology, particularly in the areas of nitrogen-oxygen (NITROX) mixtures and oxygen rebreathers now put such sites within easy reach of almost any diver.

It is widely known within the archaeological community that California has one of the worst records in the country for submerged cultural resource site destruction.

So-called "technical" divers using NITROX and oxygen rebreathing gear have dynamited numerous shipwrecks along the California coast in their search for saleable artifacts and gold (examples: SS *Winfield Scott* and the Santa Monica harbor wreck).

To date, the State of California has done nothing to halt these destructive activities, primarily because it has neither the funds nor the available personnel to do so.

It is therefore a very real possibility, if not a probability, that irreparable damage could be visited on the site through raiding activities by unscrupulous "technicals".

During periods that the recovery vessel is not physically on site, DSR maintains a visual and electronic surveillance to detect vessels that may attempt to anchor over the wreck. Surveillance will be continued throughout the course of the project.

In addition to the standard furniture, equipment, and appurtenances of a vessel of her type and era, *Brother Jonathan* has long been thought to have carried a substantial amount of gold coin locked in strongboxes and the ship's safe. By ascertaining the presence or absence of the reputed treasure and, if it exists, recovering it, DSR hopes to remove much of the incentive for illegal raiders to dive on and destroy the site.

COMMENTARY AND OBSERVATION

In order for the remains of the vessel currently identified as *Brother Jonathan* to be subjected to proper archaeological recovery, it is essential that research activities be designed and developed with the systematic methodology that makes archaeology a true scientific

discipline. A systematic archaeological approach is imperative for ensuring proper recovery of data preserved at the site and development of the wreck in a manner that most enhances its cultural significance. In order to achieve these goals a delicate interfacing of archaeological methodology and deep-water engineering must be attained. The ultimate reason for this research design and strategy is to minimize the errors that inevitably occur in archaeological undertakings, and to maximize the volume and quality of recovered data. Since archaeology is by its own nature a destructive process, full utilization of the technological advantages available to us is imperative if we are to obtain optimum utilization of this particular resource.

AFFIDAVIT OF JAMES P. DELGADO IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF JAMES P. DELGADO IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN
Attorney General of the State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street, 12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

AFFIDAVIT OF JAMES P. DELGADO

I, JAMES P. DELGADO, declare:

I am the Executive Director of the Vancouver Maritime Museum in Vancouver, British Columbia. I have been Executive Director at the museum for four and a half years; immediately prior to that, I was the maritime historian of the National Park Service and head of the National Maritime Initiative, the federal maritime preservation program in Washington, D.C. In that capacity, among my duties, I authored the guidelines for nominating historic ships and shipwrecks to the National Register of Historic Places, and personally reviewed all shipwreck nominations to the National Register. I have prepared several dozen nominations, including all of those for National Register-listed shipwrecks on the Pacific Coast. My professional training and education

has been as a historian, maritime archaeologist, and educator. I possess a Master's Degree in Maritime History and Underwater Research from East Carolina University (1985). My thesis topic was based on my research, both historical and archaeological, in the California Gold Rush steamer TENNESSEE, wrecked north of San Francisco in 1853. I have university teaching experience at three universities.

My maritime archaeological experience is varied and includes difficult, deep water work on radioactive shipwrecks from the 1946 nuclear weapons tests at Bikini Atoll in the Marshall Islands, the wrecks of USS ARIZONA and UTAH at Pearl Harbor, the 1846 wreck of the US Brig SOMERS, in Vera Cruz, Mexico, where I led a joint U.S.-Mexican team on behalf of the Department of State and the United Sates [sic] Navy, as well as the National Park Service. The majority of my experience has been on the Pacific Coast, primarily in California waters, focusing on wrecks from the California Gold Rush. I am currently serving as one of two Canadian representatives for the International Commission on Monuments and Sites for underwater cultural heritage issues, and my specific portfolio with that committee has tasked me with responsibility for assessing World Heritage Site designation for the wreck of TITANIC, as well as working on various diplomatic initiatives in regard to TITANIC and other deep water archaeological sites in international waters.

I have authored more than dozen books and fifty articles on history and archaeology, many on maritime and maritime archaeological subjects. I have also served as a consultant and on-camera commentator for the DISCOVERY CHANNEL, NATIONAL GEOGRAPHIC EXPLORER, ABC'S WORLD OF DISCOVERY, and

other programs. I am a past trustee of the Council of American Maritime Museums, a member of the Society for Historical Archaeology, the California Historical Society and other organizations.

Attached hereto as Exhibit "A" is a true and correct copy of my current curriculum vitae.

I am familiar with the historic vessel BROTHER JONATHAN. My research activities over the past 15 years have included a comprehensive study of all Gold Rush steamers, focusing on those shipwrecked on the Pacific Coast, and I have worked on BROTHER JONATHAN and other ships in archives in Britain, Canada, the United States and Mexico. I personally prepared the recent National Register of Historic Places nomination for BROTHER JONATHAN.

I am also familiar with and have received a copy of the Preliminary Research design prepared by R2 Underwater Consultants. I have also viewed a videotape of the wreck of BROTHER JONATHAN. I am familiar with the companies and some of the individuals involved with DSR, including Donald Knight, James R. Reedy, and Harvey Harrington, although I have only met the first two individuals. Mr. Reedy and I attended the same university in the same program, but we were not classmates. I am most familiar with Mr. Harrington and Mr. Reedy's work on the wreck of HMS DE BRAAK in Delaware, which was the subject of a recent academic publication by Donald Shomette.

Based on my experience and training, I have serious professional reservations and concerns over the proposed recovery of BROTHER JONATHAN as outlined in the R2 Underwater Consultants' Research Design. My review of the videotapes, as well as my professional

experience on other sites including deep water wrecks, is that a portion of the wreck is buried and embedded, including the lower hull, and that excavation is required above and beyond removal of loose silt. There is also a considerable mass of concreted ferrous material and collapsed vessel structure that will require considerable force to remove. There is no consideration given to these factors nor is there a mention of horizontal, stratigraphic control or documentation. The technological systems employed do not address three-dimensional modeling of the wreck, as has been done on other deep water excavations and salvage operations. There is no conservation plan other than wet storage and the possibility that a conservation firm will be retained. Adequate and professional projects have a detailed conservation plan, including a discussion of field conservation measures, and the curriculum vitae of the field conservator. There is no discussion of who will undertake the actual underwater work; it may be supervised by Mr. Reedy on the surface, by such supervision has proven inadequate on any underwater project. A trained archaeologist needs to be on the site, working it. Mr. Reedy's previous project on HMS DE BRAAK saw considerable damage to human remains, artifacts and the vessel when he was not personally on the site.

In my experience, a salvor's interest in salvaging valuable materials from wreck sites often conflicts with proper methodology needed to fully preserve the archaeological and historical information and values of such sites. Unfortunately, I am familiar with wreck sites, such as HMS DE BRAAK where the salvor's operations were not subject to supervision by qualified archaeologist and as a result archaeological and historical values were lost.

It is my opinion that unless salvage of BROTHER JONATHAN is supervised by qualified archaeologist under the State California's maritime archaeology program, significant archaeological and historical data from the wreck site may be lost.

I declare under penalty of perjury that the foregoing is true and correct. If called as a witness, I could testify competently to the same.

Executed August 18th, 1995, at Vancouver, British Columbia, Canada.

/s/ James P. Delgado
JAMES P. DELGADO

EXHIBIT A
TO AFFIDAVIT OF JAMES P. DELGADO

JAMES P. DELGADO
1750 W. 13th Avenue
Vancouver, British Columbia V6J2H1
Canada
(604) 261-3731 (home)
(604) 257-8301 (office)
(604) 377-1340 (cellular)

EDUCATION

B.A. History (American History), San Francisco State University, San Francisco, California, magna cum laude, 1981.

M.S. History (Maritime History and Underwater Research), East Carolina University, Greenville, North Carolina, 1985.

EMPLOYMENT HISTORY

April 1991 - present

Executive Director, Vancouver Maritime Museum, Vancouver, British Columbia, Canada. Responsible for long range planning, community relations, exhibitions, financial development, and administration of British Columbia's principal maritime museum.

March 1987 - April 1991

Maritime Historian of the National Park Service and Head of the National Maritime Initiative, National Park Service, Washington, D.C.

History, historic preservation, maritime resource management assistance, and interpretation of maritime resources in the National Park System. Management of the United States government's maritime preservation program, emphasizing nationwide inventories, standards and guidelines for restoration, and technical assistance.

June 1979 - March 1987

Historian, United States Department of the Interior, National Park Service, Golden Gate National Recreation Area, San Francisco, California.

History, Historic preservation and historical archaeological research, management assistance and planning for a 70,000-acre national park with diverse units including Alcatraz, portions

of the Presidio of San Francisco, and the National Maritime Museum, San Francisco.

May 1978 - June 1979

Assistant to the Regional Historian, United States Department of the Interior, National Park Service, Western Regional Office, San Francisco, California.

History, historic preservation and management assistance for the Western United States and the Pacific.

1977-1978

Curator, Roberto Adobe, San Jose California, a privately owned 1835-18.7 private house museum.

1974 - 1975; 1977

Assistant Curator, New Almaden Museum, New Almaden, California. A small privately owned museum specializing in mercury mining, local Native American Culture and local history.

PART-TIME EMPLOYMENT

Instructor, San Francisco State University, Department of Humanities, 1983-1984, 1986-1987.

Instructor, San Francisco State University, Department of Anthropology, Summer 1984.

Instructor, East Carolina University, Department of History, Fall 1985.

Instructor, California Academy of Sciences, San Francisco, 1984, 1986-1987.

Instructor, University of British Columbia, School of Continuing Education, Spring 1994.

AWARDS

Annual Prize Essay Contest in American Maritime History, Marine Historical Association, Mystic, Connecticut, for the article "Murder Most Foul: San Francisco Reacts to the Loss of the S.S. Central America," 1983.

Special Achievement Award, National park Service, 1987.

Distinguished Public Service Award, for a Public Agency, South Street Seaport Museum, New York, New York. Awarded to the National Maritime Initiative, 1989.

PUBLIC SERVICE

Liaison, San Jose Youth Commission to the San Jose Historical Landmarks Commission, 1973-1974.

Commissioner, San Jose Bicentennial Commission, 1974-1975.

Commissioner, San Jose Historical Landmarks Commission, 1976-1978.

Member, Mayor's Blue-Ribbon Commission for a San Francisco Historical Museum, 1982.

Founding Board Member, National Maritime Alliance, 1990-1992.

Member of the ICOMOS (International Committee of Monuments and Sites) Committee on the International Underwater Cultural Heritage, 1991 - present

Board Member, Council of American Maritime Museums, 1992 - present

PUBLICATIONS: (available upon request)

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National Parks of America. New York: Crescent Books, 1990.

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Alcatraz Island. San Francisco: Golden Gate National Parks Association, 1991.

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"Skeleton in the Sand: Documentation of the Environmentally Exposed 1856 Ship King Philip," in Paul F. Johnston, ed. *Proceedings of the Sixteenth Annual Conference on Historical Archaeology.* Ann Arbor: Society for Historical Archaeology, 1985.

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"A Symbol of the People: Assessing the Significance of the USS Monitor," in Lee J. Cox and Michael A. Jehle (Editors) *Ironclad Intruder, USS Monitor* Philadelphia: Philadelphia Maritime Museum, 1988.

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(With a National Park Service Task Force) *National Register Bulletin #20: Nominating Historic Ships and Shipwrecks to the National Register of Historic Places.* (1986)

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NATIONAL HISTORIC LANDMARK STUDIES

*Indicates that the property was designated or listed

Schooner *Adventuress,* Seattle*
Scow Schooner *Alma* (With Kevin J. Foster) San Francisco*
Schooner *American Eagle,* Rockland, Maine*
Aquatic Park Historic District, San Francisco*
USS *Arizona,* Pearl Harbor*
Tug *Arthur Foss,* Seattle*
Sailing Ship *Balclutha,* San Francisco*
USS *Barry,* Washington, DC
Ferry *Berkeley,* San Diego*
Schooner *Bowdoin,* Castine, Maine*
Schooner *C.A. Thayer,* San Francisco*
USS *Cabot,* New Orleans*
Dredge *Captain Meriwether Lewis,* Brownsville, Nebraska*
Oyster Sloop *Christeen,* Essex, Connecticut*
Tug/Fireboat *City of Oakland,* Oakland, California*
USS *Clamagore,* Patriot's Point, South Carolina*
Fireboat *Deluge,* New Orleans*
Fireboat *Duwamish,* Seattle*
USS *Edson,* New York, New York*
Fireboat *Edward M. Cotter,* Buffalo, New York*
Bark *Elissa,* Galveston*
Schooner *Ernestina* New Bedford, Massachusetts*
Four-Masted Ship *Falls of Clyde,* Honolulu*
Fireboat *Fireboat No. 1,* Tacoma, Washington*
Fireboat *Firefighter,* New York, New York*

Schooner *Governor Stone*, Appalachicola, Florida*
Japanese Midget Submarine HA-19, Fredericksburg, Texas*
Lou Henry Hoover House, Stanford, California*
USS *Hornet*, Bremerton, Washington*
USCGC *Ingham*, Patriot's Point, South Carolina*
Schooner *Isaac H. Evans*, Rockland, Maine*
Schooner *J. and E. Riggin*, Rockland, Maine*
Four-Masted Schooner *La Merced*, Anacortes, Washington
Victory Ship *Lane Victory*, San Pedro, California*
Schooner *Lewis R. French*, Rockland, Maine*
Lightship No. 83 "Relief" Seattle*
Lightship No. 103, "Huron," Port Huron, Michigan*
Lightship No. 112, "Nantucket," Portland, Maine*
Lightship No. 116, "Chesapeake," Baltimore, Maryland*
Lightship WAL-604, "Columbia," Astoria, Oregon*
Lightship WAL-605, "Relief," Oakland, California*
Lowell's Boat Shop, Amesbury, Massachusetts*
Tug *Nash*, Buffalo, New York*
Motor Torpedo Boat PT-617, Fall River, Massachusetts*
Point Reyes Motor Lifeboat Station, Point Reyes, California*
Presidential Yacht USS *Potomac*, Oakland, California*
Fireboat *Ralph J. Scott*, San Pedro, California*
Presidential Yacht USS *Sequoia*, Washington, DC*
Steamer *Sergeant Floyd* (With Kevin J. Foster). Sioux City, Iowa*
USS *Utah*, Pearl Harbor*
Excursion Steamer *Virginia V*, Seattle, Washington*
Snagboat *W.T. Preston*, Anacortes, Washington *
Steam Schooner *Wapama*, Sausalito, California*
Warm Mineral Springs (With W.A. Cockrell), Sarasota, Florida
Presidential Yacht USS *Williamsburg*, Washington, DC

NATIONAL REGISTER OF HISTORIC PLACES NOMINATIONS

Adolph Sutro Historic District, San Francisco
Storeship *Apollo*, San Francisco*
Aquatic Park, San Francisco*
Shipwreck Site and Remains, *Brother Jonathan*, Crescent City
California Fruit Canners Association Warehouse, San Francisco*
Camera Obscura, San Francisco
Shipwreck Site and Remains, *Charles H. Spencer*, Lees Ferry, Arizona (with Toni Carrell)*
Shipwreck Site and Remains, Steamship *City of Rio de Janeiro*, San Francisco*
Sidewheel Tug *Eppleton Hall*, San Francisco
Shipwreck Site and Remains, *Frolic*, Caspar, California*
Shipwreck Site and Remains, *Goldenhorn*, Santa Rosa Island,
Hacienda and Headquarters, Rancho de Santa Teresa, San Jose
Shipwreck Site and Remains, *Isabella*, Ilwaco, Washington*
Shipwreck Site and Remains, J Street Wreck, Sacramento*
Shipwreck Site and Remains, *King Philip/Reporter*, San Francisco*
Houseboat *Lewis Ark*, San Francisco*
Matthew Turner/James Robertson Shipyard, Benicia, California*
Storeship *Niantic* Remains, San Francisco*
Olema Valley Ranches Historic District, Point Reyes, Marin County, Calfornia*
Pacific Mail Steamship Co. Depot and Shops, Benicia
Point Bonita Light, Marin County*

Point Bonita Lifeboat Station, Marin County
Point Lobos Marine Lookout Station, San Francisco*
Point Reyes Light, Point Reyes*
Point Reyes Motor Lifeboat Station, Point Reyes*
Redwood Highway (U.S. 1) Eureka, California*
Shipwreck Site and Remains, Manila Galleon *San Agustin*, Point Reyes, California*
Sarah Seaver Randall House, Olema, California*
Clipper Ship *Snow Squall*, Falkland Islands
Shipwreck Remains, *Stamboul*, Benicia*
Shipwreck Site and Remains, SS *Tennessee*, Marin County*
Tubbs Cordage Company Office, San Francisco*
Bark *Vicar of Bray*, Falkland Islands
Storeship *William Gray*, San Francisco*
Shipwreck Site and Remains, SS *Winfield Scott*, Anacapa Island*
Shipwreck Site and Remains, SS *Yankee Blade*, Lompoc, California*
Yosemite National Park Power Plant, Yosemite*

AFFIDAVIT OF DR. SHELI O. SMITH IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA
and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF DR. SHELI O. SMITH IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue,
Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

AFFIDAVIT OF DR. SHELI O. SMITH

I, DR. SHELI O. SMITH, declare:

I am the Curator of the Los Angeles Maritime Museum. The Museum is the largest maritime museum on the Pacific Coast, housing a collection of a quarter of a million items related to the maritime heritage of California, the Pacific Coast and the greater Pacific basin. In fulfillment of our mission, the Museum staff are actively involved in maritime education, exhibition, interpretation and research.

One part of my job is enhancing the public's understanding of California's maritime heritage through maritime archaeology. As a result of this duty, the Los Angeles Maritime Museum has form [sic] coalitions with

private corporations, the National Park Service, California State Parks, Caltrans, and the California State University system, in order to create, archaeologically researched, interpreted underwater shipwreck parks throughout California for the benefit of all the Californians, as well as visitors to our state. Through these efforts, California's first, interpreted, underwater shipwreck park at Emerald Bay, Lake Tahoe opened to the public last year.

I am able to fully participate in these projects, partially because of my position at the Museum and partially because of my professional training as a Nautical Archaeologist. I hold a M.S. from Texas A&M University in Nautical Archaeology (1979) and a Ph.D. from the University of Pennsylvania in Historical Archaeology specializing in maritime topics (1986). Since attending my first nautical archaeology class in 1976, I have worked on and directed archaeological investigations in the Mediterranean, North Atlantic, South Atlantic, Caribbean and Pacific oceans, as well as the Great Lakes and numerous other lakes and rivers along the Atlantic, Gulf and Pacific coasts. The most notable investigations I have been associated with are: the 17th century Basque fishing ship at Isle aux Morts, Newfoundland, the early 18th century merchantman in lower Manhattan, the American Revolutionary War privateer, *Defence* at Penobscot, Maine, the American clipper ship, *Snow Squall* in the Falkland Islands, and California Gold Rush merchantman, *La Grange* in Sacramento. For a complete list of the projects I have worked on and published, as well as the professional societies to which I belong, I have attached as Exhibit "A" a true and correct copy of my curriculum vitae.

I am familiar with the historic vessel *Brother Jonathan* based on my general knowledge of California history, numerous popular articles written about the shipwreck and her disaster, and the information provided in the nomination to the National Register of Historic Places. I am also familiar with and have reviewed a copy of the R2 Underwater Consultants' Preliminary Research design submitted to the district court in support of Deep Sea's opposition to the State's motion for a Stay Order. I have viewed an underwater videotape of the *Brother Jonathan* which I understand was prepared by DSR and submitted to the district court in this case. The video was shown to me by Peter Pelkofer.

I have met James "Rob" Reedy, who DSR has hired or proposed to have do the archaeological recovery on the *Brother Jonathan*. We have discussed archaeological work on several occasions and I have read other research designs put forth by Mr. Reedy.

Based on my training and experience as a maritime archaeologist, I believe that DSR's proposed plan of archaeological recovery is incomplete, inadequate and inappropriate for a shipwreck of this age, this environment and this significance. Their plan does not meet professional or scientific standards for excavation and recovery of the artifacts aboard the *Brother Jonathan*. It is incomplete because it does not lay out the anthropological questions that form the base of all research designs, nor does it satisfactorily explain the methodology of recordation and site destruction prevention due to propwash excavation. The plan is inadequate because it focuses on the mining of one specific mineral and does not address the historical significance of the entire context of the archaeological site. It is inappropriate because

it proposes to destroy an entire historical site for the recovery of a single item.

In my opinion, if the *Brother Jonathan* is excavated according to DSR's proposed plan, valuable archaeological and historical evidence and information will be irretrievably lost from this valuable shipwreck site. Specifically, the use of propwash and the inability to control appropriate archaeological recordation while excavating with this methodology will result in the total loss of spatial relationships among artifacts and the potential inappropriate exhumation of human remains.

In my experience, a salvor's myopic interest in salvaging valuable and trafficable materials from shipwreck sites often conflicts with proper methodology needed to fully preserve the archaeological and historical information and values of such sites. Unfortunately, I am familiar with other wreck sites including the Whydah and DeBraak where the quality of the archaeological investigation was directed by the salvors and not directly supervised by outside qualified archaeologists, who did not directly answer to the salvors. As a result, a great deal of archaeological and historical information were irrevocably lost.

It is my opinion that unless salvage of the *Brother Jonathan* is supervised by qualified archaeologists under the State of California's maritime archaeology program, significant archaeological and historical data from the shipwreck will be lost.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 24, 1995, San Pedro, California.

/s/ Dr. Sheli O. Smith
DR. SHELI O. SMITH

EXHIBIT A
TO AFFIDAVIT OF DR. SHELI O. SMITH

Curriculum Vitae

(1980-Present/Prior Experience available upon request)

Sheli O. Smith
424 W. Burnett St.,
Long Beach, CA
90806 USA,

310/424-0201 Home
310/832-6537 Fax
310/548-7491 Office
LAMM@NETCOM.COM email

Education

1986 Ph.D.; University of Pennsylvania
Major: Historical Archaeology

1984 M.A.; University of Pennsylvania
Major: Historical Archaeology

1979 M.S.; Texas A&M University
Majors: Nautical Archaeology and Geography

1976 B.A.; University of Arizona
Majors: Anthropology and Classics

Current Position

1990- Senior Curator; Los Angeles Maritime Museum, San Pedro, Ca.

Curatorial Experience

1985-87 Curator of Education, Mariner's Museum, Newport News, VA

1984-85 Interpreter, Philadelphia Maritime Museum, Philadelphia, PA

1978-83 Curator of Maritime Objects, Maine State Museum, Augusta, ME.

Nautical Archaeological Experiences

1995 Coordinator, Delta Archaeological Field School, Los Angeles Maritime Museum, Los Angeles.

1994 Director, Emerald Bay Barge Project, California Department of Parks and Recreation, Sacramento.

1991 Director, Emerald Bay Barge Project, California Department of Parks and Recreation, Sacramento.

1991 Archaeologist Consultant; San Francisco Muni-Metro Turnaround, Mason Tillman Associates, Oakland.

1989 Archaeologist, Emerald Bay Barge Project, California Department of Parks and Recreation, Sacramento

1988-89 Assistant State Underwater Archaeologist; Maryland Historical Trust, Annapolis, Md.

1988 Archaeologist; Protestant Cay Pipeline Reconnaissance, St. Croix, USVI., Protestant Cay Hotel.

Staff; Investigation of Submerged Cultural Resources in Seattle, Washington. Seattle District, Army Corps of Engineers.

1987-88 Staff; Remote Sensing Survey of Long Beach Harbor, Los Angeles, California. L.A. District, Army Corps of Engineers.

Co-Director; Investigation of the California Gold Rush Era Sailing Vessel, La Grange,

Sacramento, California. California Parks and Recreation.

1986- Archaeologist; Iroquois Gas transmission System Remote Sensing Survey of Long 88 Island Sound, Shelton, Connecticut.

1986-87 Assistant Director; Harts Cove Shipwreck Investigation, Portsmouth, N.H. Maritime Archaeological and Historical Research Institute (MAHRI).

1985 Staff; Yorktown Shipwreck Project, Yorktown, Va. Commonwealth of Virginia.

1984 Artifact Analyst; Whidah Project, Cape Cod, Massachusetts. MAHRI

1983 Archaeologist; General Arnold Project, Plymouth, Massachusetts. Colonial Ships Museum.

Director; Isle aux Morts Project, Isle aux Morts, Newfoundland, Canada. Newfoundland Cultural Heritage Division.

Archaeologist; Snow Squall Project, Stanley, Falkland Islands. Harvard University.

1982 Co-Director; Ronson Ship Investigation, New York, N.Y. Soil Systems, Inc.

Publication Coordinator; Defence Project, Maine. State of Maine.

Archaeologist; Piscataqua Survey, Portsmouth, New Hampshire. New Hampshire and Maine State Historic Preservation Offices (NHSHPO & MSHPO).

1981 Assistant Director, Archaeology; Defence Project, Maine. State of Maine.

1980 Staff; Piscataqua Survey, Portsmouth, New Hampshire. NHSHPO & MSHPO

Staff; Bangor Survey, Bangor, Maine. Maine Department of Transportation

Teaching Experience

1994-Pres. Instructor, Introduction to Underwater Archaeology, Los Angeles Maritime Museum Education Program

1991 Instructor, Museum Studies, Los Angeles Department of Recreation & Parks

1991 Instructor, Underwater Archaeology for Scuba Instructors, National Park Service Workshop, Fort Jefferson, Dry Tortugas, Florida.

1989 Instructor, Nautical Archaeology, Recreational & Educational East End Field Station, Grand Cayman, B.W.I.

1987 Instructor, Maritime History of Chesapeake Bay (HIST 495/595), Old Dominion University, Virginia

1986 Instructor, Nautical Archaeology (ANTHR 495/595), Old Dominion University, Virginia

1985 Instructor, Nautical Archaeology (Adult Education), The Mariners' Museum, Virginia

Instructor, Nautical Archaeology, Broward County Historical Society, Florida

Instructor, Archaeological Illustration, New Hampshire State Cooperative Regional Archaeology Plan

1984 Instructor, Nautical Archaeology (Mini-course), Memorial University, Newfoundland, Canada

1983 Tutor, Physical Anthropology, University of Pennsylvania

1982-83 Lecturer, University of Pennsylvania Museum Statewide Lecture Series, "Archaeology Underwater."

1979-80 Lecturer, Maine State Museum Statewide Lecture Series, "The Defence, An Underwater Dig."

Guest Lecturer, Bates College, Maine; Harvard University, Massachusetts; and University of Southern Maine.

Publications: Articles, Monographs and Newsletters

1994 *The Historic Barges of Emerald Bay; An Interactive Multimedia Database.* California State University, Long Beach and the Los Angeles Maritime Museum.

1994 *Introduction to Underwater Archaeology.* Los Angeles Maritime Museum.

1993 *Underwater Archaeology Proceedings from the Society for Historical Archaeology Conference, Kansas City, Missouri,* editor. Society for Historical Archaeology, Tucson, AZ.

1993 *Educational Standards in Underwater Archaeology,* editor. Advisory Council on Underwater Archaeology.

1990 "Fair Wind, Fair Gender, Fair Due," *Underwater Archaeology: Proceedings form the Society for Historical Archaeology Conference, Tucson.* Editor Toni Carrell. The Society for Historical Archaeology, Pleasant Hill, Ca.

1990 "Women in Seafaring," *The Proceedings of the Chacmool Conference.* University of Calgary, Alberta, Canada.

1990- *Compass Rose Newsletter,* editor. Friends of the Los Angeles Maritime Museum.

1988 *Archaeology in Solution; The Proceedings of the Conference of Underwater Archaeology, Sacramento, California.* Co-editor, John W. Foster. Coyote Press, Salinas, California.

"Preliminary Report on Casks Excavated from 44YO88," *Archaeology in Solution; The Proceedings of the Conference of Underwater Archaeology, Sacramento, California.* John W. Foster and Sheli Smith, Editor. Coyote Press, Salinas, California.

"Excavation of the Ronson Ship," *Archaeology in Solution; The Proceedings of the Conference of Underwater Archaeology, Sacramento, California.* John W. Foster and Sheli Smith, Editors. Coyote Press, Salinas, California.

1987 "Life at Sea," *The Sea Remembers.* Peter Throckmorton, general editor. Mitchell Beazely Publisher, London.

"Communications in Archaeology," *Proceedings of the 1987 Conference on Underwater Archaeology.* Alan Albright, general editor. The Society of Historical Archaeology Special Publication.

"The Hart's Cove Wreck," *Proceedings of the 1987 Conference on Underwater Archaeology.* Alan Albright, general editor. The Society of Historical Archaeology Special Publications.

1986 *The Defence: Life at Sea as Reflected in an Archaeological Assemblage from an Eighteenth Century Privateer,* unpublished doctoral dissertation, U. of Pennsylvania.

"Victualling Cornwallis' Fleet at Yorktown," *The Log,* The Mariner's Museum, Newport News Virginia. Co-authors Kerry Shackelford and Linda Brown.

1984-91 *MAHRI Newsletter,* editor. Maritime Archaeological and Historical Research Institute, Bristol, Maine.

1985 "The Ronson Ship Finds a Good Home," *Sea History.* Autumn Issue. Co-author Warren Riess.

"Excavating Black Bellamy's Booty," *Faces* (childrens' educational magazine). May issue. Co-author Warren Riess.

"The Ship That Built a City," *Sea History,* New York Spring Issue. Co-author Warren Riess.

1984 *New Hampshire Committee for the Promotion of History Newsletter.* New Hampshire History Center, Durham, N.H. Assistant editor.

1983 "The Ronson Ship," *Sea History.* Summer Issue. Co-author Warren Riess.

"The Archaeological Investigation of the Shipwreck at Isle aux Morts," *Newfoundland Journal of Archaeology.* Newfoundland Cultural Resources Division, St. Johns, Newfoundland.

1982 *Handbook for Sport Divers.* New England Marine Advisory Service Publication. Co-authors R. Cembrola, Paul Johnston, K. Morris, W. Riess, J. Stevens.

"Collections Within a Collection," *The Proceedings of the Thirteenth Conference on Underwater Archaeology,* Donald Keith, editor. Fathom Eight Publication.

1981 "Tell-Tale Provenances," *The Proceedings of the Twelfth Conference on Underwater Archaeology,* Gordon Watts, editor. Fathom Eight Publications.

"Sail Types of Southern China," *Mariners' Mirror,* August. Co-author Christian Buys.

Publications: Technical Reports

1994 Maritime PictureThis User Guide; An Interactive Multimedia program. Apple, Inc., Cupertino, California.

1991 Emerald Bay Barges Survey; 1989-90. California Parks and Recreation, Sacramento.

Long Beach's First Commercial Visitor, SS Iaqua. Long Beach Port Authority, Long Beach.

1988 Reconnaissance Test of a Remotely Operated Vehicle on Submerged Cultural Resources in Elliott Bay, Washington. Evans-Hamilton, Inc. Seattle, Washington. Co-authors Stephen James, Jr. and Jack Hunter.

La Grange A California Gold Rush Legacy. California Parks and Recreation, Sacramento. Co-author Stephen R. James, Jr.

1987 Iroquois Gas Transmission System Remote Sensing Survey of Long Island Sound. TransCanada Pipeline, Inc., Toronto, Canada.

1987 Field Report on the Hart's Cove Wreck, Maritime Archaeological and Historical Research Institute, Bristol, Maine. Co-author Dr. David.

1986 1986 Preliminary Report of the Hart's Cove Wreck, Maritime Archaeological and Historical Research Institute, Bristol, Maine. Co-author Dr. David Switzer.

1981 Final Field Report on the Revolutionary War Privateer, Defence. Maine Historic Preservation Office.

Exhibits

1995 Cabrillo Aquarium's 60th Anniversary. Los Angeles Maritime Museum.

1994 Wilmington Transportation Company; 110 Years of Tugs and Lighterage. Los Angeles Maritime Museum

1994 Naval Nomens; Ship Plaques. Los Angeles Maritime Museum

1993 The Eclectic Mariner. Los Angeles Maritime Museum

1993 Sea Shadows by Carlos Eyles. Los Angeles Maritime Museum

1992 50th Anniversary of the Municipal Ferry Building. Los Angeles Maritime Museum

1992 California's Celebrated Sailor; Harry Pidgeon. Los Angeles Maritime Museum

1991 The Hidden Images of Pearl Harbor. Los Angeles Maritime Museum

1991 Five Harbor Views. Los Angeles Maritime Museum

1991 An Impending Sense of Heroism; Bicentennial Portraits of the United States Coast Guard by Slobodan Dimitrov. Los Angeles Maritime Museum

1990-93 Winners of the Annual International Underwater Photographic Competition.

Underwater Photographic Society. Los Angeles Maritime Museum

1990 Building America Yesterday, Today and Tomorrow. The Brotherhood of Carpenters and Pile Drivers. Los Angeles Maritime Museum.

1990 America's Cup; The work of Jerri Converse. Los Angeles Maritime Museum

1985 The Ship Beneath the City. Mariner's Museum.

1980 The Defence; The Battle of Penobscot Revisited. Maine State Museum.

Published Illustrations

1991 Emerald Bay Barges Survey, California Dept. of Parks and Recreation.

1987 La Grange A California Gold Rush Legacy, UAC

1986- The Archaeological Investigation of the Virginia Manufactory of Arms, Association 88 for the Preservation of Virginia Antiquities

1986-87 Hart's Cove Archaeological Investigation, 1986 & 1987 Field Seasons, MAHRI

1985 1985 YO88 Season Report, Yorktown Archaeological Shipwreck Project.

1984 Whidah Project, Michael Roberts and Warren Riess, editors.

1984 Massachusetts Parks Survey, Massachusetts Department of Education.

1984 Micronesia Historic Sites Parks, Department of the Interior.

1982 Turner Farm & Goddard Site Excavations, Bruce Bourque, editor.

1982 Ronson Ship Report, Joan Geismar, editor.

1981 Piscataqua Survey; Remote Sensing, David Switzer.

1980 History of and Search for the Angel Gabriel, a Seventeenth Century Bristol Merchantman, Warren Riess, masters thesis.

Professional Organizations

Society for Historical Archaeology/Educational Standards Committee, Chair

Institute of Nautical Archaeology

Maritime Archaeological and Historical Research Institute, Board Member

Recreational Scuba Training Council, Associate Member

Other Applicable Information & Experience

Underwater Archaeological Consortium, Partner; Educational Outreach Services

Diving: Certified SSI Instructor. More than 700 dives with scuba and surface supply. 1992-1994 Diving Safety Officer, Ocean Studies Institute, CA State Univ.

Terrestrial Archaeological Experience: Available upon request.

Experience prior to 1980

Nautical Archaeology Experience

1979 Staff; Cayman Island Project, Cayman Islands, B.W.I. Institute of Nautical Archaeology.

Research Associate; Defence Project, Maine. State of Maine.

1978 Field Student; Defence Project, Maine. INA.

Team Member; Angel Gabriel Survey, Pemaquid, Maine. MSHPO.

Team Member; Griffon Project, Tobermory, Ontario, Canada. INA.

1977 Team member; Black Cloud Survey, Liberty, Texas. INA.

1976 Field Student; Poros Survey, Poros, Greece. University of Arizona.

Curatorial Experience

1979 Research Associate, Maine State Museum, Augusta, ME.

Published Illustrations

1979 Bureau of Land Management Outer Continental Shelf Study, Historical Shipping. Vol. III, Michael Roberts, editor.

Reconstruction of Interior Structures of the Defence through Blast Pattern Analysis, Sheli Smith, masters project.

1978 Yassi Ada, A Byzantine Shipwreck, George Bass, editor.

1978 Gravisca, An Etruscan Port, Lisa Shuey, masters thesis.

AFFIDAVIT OF J. BARTO ARNOLD III IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA
and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF J. BARTO ARNOLD III IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue,
Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

I, J. BARTO ARNOLD III, declare:

I am State Marine Archeologist for Texas. I am employed by the Texas Historical Commission. The Texas Historical Commission is the historical preservation agency for the State of Texas and the Executive Director, Mr. Curtis Tunnell, is the State Historic Preservation Officer. I am not offering the following in my official capacity but rather as a private individual.

My job involves research, preservation and protection (i.e., cultural resource management) of shipwrecks in this state. I have a BA and MA in anthropology/archeology from the University of Texas at Austin. My background, experience, publications and affiliations are described in the attached Vita which is a true and correct copy of my recent Vita.

I have read and am familiar with the *Brother Jonathan* from a copy of the National Register Nomination Form and have reviewed the preliminary research design prepared by R2 Underwater Consultants for Deep Sea Research which was provided to me by Peter Pelkofer, Counsel for the California State Lands Commission. I am familiar with James Reedy by reputation. He is known in underwater archeological circles as one who is willing to work for treasure hunting companies which most archaeologists believe is professionally unethical and which is discouraged by all major professional archeological societies.

Based on my training and experience as a marine archeologist, I believe that DSR's proposed plan for archeological recovery is not adequate or appropriate. It does not meet professional or scientific standards for the *Brother Jonathan* because it focuses on the recovery of only the intrinsically valuable artifacts. Proper archeology would address all types of artifacts and associated data. Focusing on the treasure will inevitably lead to the destruction of other scientific archeological information. This would be an unfortunate expenditure of an irreplaceable part of the cultural patrimony. Historic shipwrecks are a non-renewable, very limited resource and should be treated with the utmost care and attention to preservation. In studying for over 24 years examples of commercial treasure salvage of historic wrecks around the country and the world, I can report that there is not a single example that resulted in the appropriate archeological investigation and results. Mr. Reedy is associated, according to his vita, with the Whydah project in Massachusetts and another project in Delaware, both treasure salvage projects, and both widely considered to be disasters in the archeological community. It is my

opinion that unless the *Brother Jonathan* is excavated by a bonafide, scientific archeological project under the State of California's maritime archeology program, significant archeological and historical data from the wreck site may be lost.

I declare under penalty of perjury that the foregoing is true and correct. Executed August 22, 1995, at Austin, Texas.

/s/ J. Barto Arnold III
J. BARTO ARNOLD III

VITA

NAME: J. Barto Arnold III

PLACE & DATE OF BIRTH:

San Antonio, Texas, January 9, 1950

CURRENT POSITION:

State Marine Archeologist, Texas Historical Commission

EDUCATION:

B.A. The University of Texas as Austin, 1971 (Cum Laude; Phi Beta Kappa)
M.A. The University of Texas as Austin, 1973

POSITIONS HELD:

Texas Archeological Research Laboratory, The University of Texas at Austin, excavation crew member – George C. Davis Site (41CE19), 1970.

Texas Archeological Research Laboratory, The University of Texas at Austin, research assistant (Antiquities Conservation Lab), 1971-72.
Texas Antiquities Committee, assistant marine archeologist, 1972-75.
Texas Antiquities Committee and Texas Historical Commission, State Marine Archeologist, 1975 to date.

FIELDS OF INTEREST:

Underwater archeology; archeological applications of remote sensing, computer graphics and data processing; cultural resource management; New World prehistory; ceramic analysis.

SOCIETY OF PROFESSIONAL ARCHEOLOGISTS:

Certified in the following professional emphases: field research, collections research, archeological administration, cultural resource management, marine archeological surveying, museology (conservation), underwater archeology, documentary research.

SCOUTING: Eagle Scout

PROFESSIONAL ACTIVITIES AND HONORS:

Organizer and chairman of a symposium on underwater archeology at the 40th Annual Meeting of the Society of American Archeology, 1975.

Advisory committee on certification of Marine Survey Archeologists for the Society of Professional Archeologists, Chairman 1976-77, member 1978, Chairman 1979-80.

Advisory Council on Underwater Archaeology; *ex officio* member 1977; member 1978 to 1992, Vice

Chairman 1981; Chairman 1982-1984 and 1985-1987.

Program chairman for the 9th Conference on Underwater Archaeology, held concurrently with the 11th Annual Meeting of the Society for Historical Archaeology in San Antonio, 1978.

U.S.S. *Monitor* Technical Advisory Committee sponsored by NOAA, member 1977-1990.

Underwater archeology consultant for the National Trust for Historic Preservation, Maritime Preservation Program, 1979 to 1990.

Presidio La Bahia Award for best publication on Spanish colonial history or archeology, Sons of the Republic of Texas, 1979.

1980 U.S. Department of Interior, Heritage Conservation and Recreation Service Achievement Award for Historic Preservation relating to research on the 1554 fleet.

Associate Editor, Advances in Computer Archaeology, 1982-89.

Editorial Advisory Committee, Historical Archaeology Journal, 1983 to date.

Paper Session Chairman at Annual Conference on Underwater Archeology Numbers 9-14, 16, 17 (1978-83, 1985-86); Society for Historical Archaeology Conference on Historical and Underwater Archaeology, 1987-1991.

Program/Research Associate, Island Resources Foundation, 1985 to date.

Assistant Secretary-Treasurer, Society of Professional Archeologists, 1985-1987.

Secretary-Treasurer, Society of Professional Archeologists, 1987-1989.

Contributor to the revised Handbook of Texas, 1985-1989.

Panel member, Congressional Office of Technology Assessment Session on Technology and Underwater Archeology, 1986.

Member, Committee to evaluate the maritime resources of the U.S. convened by the National Park Service and the National Trust for Historic Preservation under Congressional mandate, 1986-1987.

National Trust Committee on Marine Archeology, 1987 to date.

Governor's Advisory Committee on Maritime Archeology, State of Maryland, 1987-1989.

National Coalition for Applied Preservation Technology (CAPT), Advisory Council member – to establish the National Center for Applied Conservation Technology, 1987-1994.

Program Committee member, First Joint Archaeological Congress, Baltimore, Maryland, 1989.

Underwater Archaeology Program Chairman, Society for Historical Archaeology Conference on Historical and Underwater Archaeology, Baltimore, Maryland, 1989.

Entry in *Who's Who in the South and Southwest* 1992-1993, *American Men and Women of Science* 1989, and *Who's Who in Government Services* 1990.

Society of Professional Archeologists Special Achievement Award for contributions to passage of the Abandoned Shipwreck Act into law, 1990.

Lecturer, University of Nevada Reno, Continuing Education Seminar on Archeology for Cultural Resource Managers, 1991 and 1992.

President, Society for Historical Archaeology 1993; President-Elect, 1992; Past President, 1994.

Guest editor, *Historical Archaeology* Vol. 26, no. 4, a special issue entitled *Advances in Underwater Archaeology.*

1st Place Artifact Image, 1993 Archaeological Photo Festival Competition held at the Society for Historical Archaeology's Annual Meeting.

Presented the first Peter Throckmorton Memorial Lecture, May 13, 1993, in the public lecture series of the Institute of Archaeology, UCLA, entitled Underwater Archaeology of the Shipwrecks of New Spain Fleet, 1554: Padre Island, Texas. The Throckmorton Memorial Lecture is sponsored by Dr. Bruce Hector.

1st Place Field Work in Progress, 1994 Archaeological Photo Festival Competition held at the Society for Historical Archaeology's Annual Meeting

Member, History Areas Committee of the National Park System Advisory Board, US Dept. of the Interior, 1994.

Invited participant, Save the Past for the Future conference sponsored by the Society for American Archaeology, September 19-13 [sic], 1994, Breckenridge, Colorado.

MEMBERSHIPS IN PROFESSIONAL ORGANIZATIONS:

Society for Historical Archaeology
Society of Professional Archeologists
Society for American Archeology
American Anthropological Association
Texas Archeological Society
Archaeological Institute of America
Council of Texas Archeologists

EXPERIENCE:

Excavation crew member, Texas Archeological Research Laboratory, University of Texas at Austin, George C. Davis Site (41CE19), 1970.

Assistant Director, Padre Island Project, 1554 Flota Excavations, Texas Antiquities Committee, 1972-1973.

Director, Padre Island Marine Magnetometer Survey and Underwater Site Test Excavations, Texas Antiquities Committee, 1974-1977.

Director, Matagorda Bay Marine and Airborne Magnetometer Survey and Underwater Site Test Excavations, Texas Antiquities Committee, 1978.

Director, Galveston Marine Magnetometer Survey, Texas Antiquities Committee, 1980.

Intergovernmental Personnel Agreement Contractor, Development of an underwater cultural resources management plan, US Army Corps of Engineers, New Orleans District, 1986-1987.

Co-Director, Padre Island National Seashore Project, marine and land magnetometer surveys and

underwater site test excavations, National Park Service and Texas Antiquities Committee, 1985 and 1986.

Project Archeologist (Principal Investigator), USS *Monitor* Project, National Oceanic and Atmospheric Administration and US Navy, 1987.

Director, numerous other shorter-term land magnetometer surveys, marine magnetometer surveys, and shipwreck investigations. (See publications.)

BIBLIOGRAPHY – Arnold, J. Barto III

1974a The archeological applications of computerized contour and perspective plotting. *Newsletter of Computer Archaeology* 10(1):1-7.

1974b A magnetometer survey of the nineteenth century steamboat *Black Cloud*. *Bulletin of the Texas Archeological Society* 45:225-230.

1975a Porosity and refiring tests on ceramics from the George C. Davis site, Texas. *Bulletin of the Texas Archeological Society* 46:231-241.

1975b A radar position-fixing system for marine magnetometer surveys. *Archaeometry* 17(2):237-239. (Arnold and Clausen.)

1975c A marine archaeological application of automated data acquisition processing. *Newsletter of Computer Archaeology* 11(1):5-11.

1975d A magnetometer survey with electronic positioning control and calculator-plotter system. *International Journal of Nautical Archaeology* 4(2):353-366. Reprinted in *Historical Archaeology* 9:26-40. (Arnold and Clausen.)

1975e Magnetic delineation of individual shipwreck sites: a new control technique. *Bulletin of the Texas Archeological Society* 46:69-86. (Clausen and Arnold.)

1976a The magnetometer and underwater archaeology: magnetic delineation of individual shipwreck sites, a new control technique. *International Journal of Nautical Archaeology* 5(2):159-169. (Clausen and Arnold.)

1976b *An underwater archeological magnetometer survey and site test excavation project off Padre Island, Texas.* Texas Antiquities Committee, Publication 3. Austin.

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1977a Results of a magnetometer survey at Hueco Tanks, a prehistoric Mogollon village in western Texas. *Texas Journal of Science* 28(1-4):201-207. (Arnold and Kegley.)

1977b Site test excavations underwater: the sequel to the magnetometer survey. *International Journal of Nautical Archaeology* 6(1):21-36.

1977c A proton magnetometer survey of the Babcock Kiln. Appendix III *Texana: excavations at a nineteenth-century inland coastal town, Jackson County, Texas,* by Marsha F. Jackson. Palmetto Bend Reservoir Series, Vol. 1 (of 3 vols.). Texas Archeological Survey, Research Report 56. The University of Texas at Austin. (Arnold and Jackson.)

1977d Underwater test excavations off Padre Island, Texas. *Journal of Field Archaeology* 4(4):485-488.

1978a *1977 underwater site test excavations off Padre Island, Texas.* Texas Antiquities Committee, Publication 5. Austin.

1978b *Beneath the waters of time: proceedings of the Ninth Conference on Underwater Archaeology.* Texas Antiquities Committee, Publication 6. Austin. (Editor and contributor.)

1978c The *Flota* disaster of 1554. In *Beneath the waters of time: proceedings of the Ninth Conference on Underwater Archaeology.* Texas Antiquities Committee, Publication 6. Austin.

1978d Underwater site testing: results of the Texas Antiquities Committee's 1977 field season. In *Beneath the waters of time: proceedings of the Ninth Conference on Underwater Archaeology.* Texas Antiquities Committee, Publication 6. Austin.

1978e Underwater cultural resources and the antiquities market. *Journal of Field Archaeology* 5(2):232.

1978f Some thoughts on salvage law and historic preservation. *International Journal of Nautical Archaeology* 7(3):173-176.

1978g *The nautical archeology of Padre Island: the Spanish shipwrecks of 1554.* Academic Press, New York. Texas Antiquities Committee, Publication 7. Austin. (Arnold and Weddle.)

1978h Ninth Conference on Underwater Archaeology: A report on the annual meeting. *International Journal of Nautical Archaeology* 7(2):164-165.

1979a *Documentary sources for the wreck of the New Spain fleet of 1554.* Texas Antiquities Committee, Publication 8. Austin. (Winner of the 1979 Presidio La Bahia Award, presented by the Sons of the Republic of Texas, for best publication on Spanish colonial history or archeology.) (McDonald and Arnold.)

1979b Archaeological applications of computer-drawn contour and three dimensional perspective plots. *Computer graphics in archaeology: statistical cartographic applications to spatial analysis in archaeological contexts.* Arizona State University Anthropological Research Papers 15. Tempe.

1979c Kirbee Kiln Magnetomer survey. Appendix III in *Kirbee Kiln: a mid-19th century Texas stoneware pottery,* by James M. Malone, Georgeanna H. Greer, and Helen Simons. Office of the State Archeologist Report 31. Texas Historical Commission, Austin.

1980a Shipwrecks in the wake of Columbus. In *Archeology* [sic] *under water: an atlas of the world's submerged sites,* edited by Keith Muckelroy, pp 102-109. McGraw Hill, New York.

1980b Review of *Maritime Archaeology,* by Keith Muckelroy. *American Anthropologist* 82:880-881.

1980c Appendix I: the magnetometer survey. In *Archaeological investigations at Hueco Tanks*

State Park, El Paso County, Texas, edited by George Kegley. Texas Parks and Wildlife Department, Austin.

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1981c Remote sensing in underwater archaeology. *International Journal of Nautical Archaeology* 10(1):51-62.

1981d *Texas heritage conservation plan computerization program manual.* Texas Historical Commission, Austin. (Co-author with Robert J. Mallouf, Helen Simons, Robert L. Wilson, Susan L. Andrews, David Moore.)

1981e A marine archaeological magnetometer survey in the Galveston area. In *Underwater archaeology: the challenge before us; the proceedings of the Twelfth Conference on Underwater Archaeology,* edited by Gordon P. Watts, Jr., pp 209-217. Fathom Eight, San Marino, CA.

1982a Archaeological applications of computer graphics. In *Advances in archaeological method*

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1982f Concerning underwater remote sensing surveys, anomalies, and ground truthing. In *Underwater archaeology: the proceedings of the Eleventh Conference on Underwater Archaeology,* edited by Calvin R. Cummings, pp 155-182. Fathom Eight. San Marino, CA.

1982g A shipwreck site: reference vs. location. *Search: The Journal of Undersea Archeology* 6(2):10-16.

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Mexico Information Transfer Meeting, pp 173-175. Minerals Management Service, Outer Continental Shelf Office, New Orleans.

1983a Some additional thoughts on H.R. 132. *Journal of Field Archaeology* 10:113.

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1984b Platoro Limited, Inc. vs. the unidentified remains of a vessel: U.S. District Court proceedings in a treasure hunting case. In *Underwater archaeology: the proceedings of the Thirteenth Conference on Underwater Archaeology,* edited by Donald H. Keith, pp 59-66. Fathom Eight, San Marino, CA.

1984c The keel of the *San Esteban* (1554): continued analysis. *International Journal of Nautical Archaeology* 13(4):287-296. (Rosloff and Arnold.)

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1987i The Padre Island archaeological survey for 1986. In *Underwater archaeology proceedings from the Society for Historical Archaeology Conference*, edited by Alan B. Albright, pp 14-20. The Society for Historical Archaeology. (Arnold and Nordby.)

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1988a The 1988 Conference on Underwater Archaeology: a note on the meeting. *International Journal of Nautical Archaeology* 17(2):187-190.

1988b U.S.S. *Monitor* Project: preliminary report on 1987 field work. In *Underwater archaeology proceedings from the Society for Historical Archaeology Conference*, edited by James P. Delgado, pp 6-9. The Society for Historical Archaeology. (Arnold, Jenkins, Miller, Peterkin, Peterson, and Stewart.)

1988c Comment on 'Early modern ordnance and European penetration of the Caribbean: the operational dimension' (IJNA 17:35-53). *International Journal of Nautical Archaeology* 17(4):351-354.

1988d Preliminary report on the Padre Island archaeological research project of 1985. In *Archaeology in solution: proceedings of the Seventeenth Annual Conference on Underwater Archaeology*, edited by John W. Foster and Sheli O. Smith, pp 90-94. Coyote Press, Salinas, CA. (Nordby and Arnold.)

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The Society for Historical Archaeology. (Editor.)

1989d Review of *A year on a monitor and the destruction of Fort Sumter*, by Alvah F. Hunter, edited by Craig L. Symonds. *The American Neptune* 49(4):312-313.

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1990a Review of *Ships and shipwrecks of the Americas*, edited by George F. Bass. *Historical Archaeology* 24(1):109-112.

1990b The survey for the *Zavala*, a steam warship of the Republic of Texas. In *Underwater archaeology proceedings from the Society for Historical Archaeology Conference*, pp 105-109. The Society for Historical Archaeology. (Arnold, Cussler, and Gronquist.)

1990c A hilt from the 1554 flota. *International Journal of Nautical Archaeology* 19(3):221-224. (Arnold and Godwin.)

1991a *The 1987 expedition to the* Monitor *National Marine Sanctuary: data analysis and final report.* Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration. (Arnold, Fleshman, Hill, Peterson, Stewart, Gegg, Watts, and Weldon.)

1991b Review of *Whaling in the North Atlantic: from earliest times to the mid-19th century*, by Jean-Pierre Proulx. *Historical Archaeology* 25(3):120.

1991c USS *Monitor*: update on data analysis from the 1987 season. In *Underwater archaeology proceedings from the Society for Historical Archaeology Conference*, edited by John D. Broadwater, pp 71-72. The Society for Historical Archaeology. (Arnold, Fleshman, Garrison, Hill, Peterson, Stewart, Watts, and Weldon.)

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1992d *Advances in Underwater Archaeology. Historical Archaeology*, 26(4). (Editor.)

1992e USS *Monitor*: results from the 1987 season. *Historical Archaeology*, 26(4):47-57. (Arnold, Fleshman, Peterson, Stewart, Watts, and Weldon.)

1992f Shipwreck! - the 1554 *flota* exhibit. *International Journal of Nautical Archaeology* 21(4):343-350.

1992g A children's museum exhibit on the 1554 *flota* wrecks. *International Journal of Nautical Archaeology* 21(4):350-353. (Arnold and Alsup.)

1993a Matagorda Bay surveys: applications of inexpensive satellite navigation. *International Journal of Nautical Archaeology* 22(1):79-87.

1994a Review of *The Studland Bay Wreck – A Spanish Shipwreck off the Dorset Coast. International Journal of Nautical Archaeology* 23.1:72.

1994b Preliminary mapping of the Caney Creek Wreck: A model of appropriate private sector access to an historic shipwreck. *International Journal of Nautical Archaeology* 23.2:109-113.

1995a Review of Six NPS Submerged Cultural Resources Unit Publications. *The Public Historian* 17, Winter 1995, Number 1:100-103.

PAPERS BEFORE PROFESSIONAL ORGANIZATIONS

1974 A magnetometer survey of a prehistoric village in western Texas. Paper presented to the 39th Annual Meeting of the Society for American Archaeology. Washington, D.C.

1975 A magnetometer survey with electronic positioning control and calculator-plotter system. Paper presented to the Sixth International Conference on Underwater Archaeology. Charleston, South Carolina.

1975 New marine magnetometer survey technology for underwater archeological applications. Paper presented to the 40th Annual Meeting of the Society for American Archaeology. Dallas, Texas.

1976 Site test excavations underwater: the Texas Antiquities Committee's 1975 summer field project. Paper presented to the Seventh International Conference on Underwater Archaeology. Philadelphia, Pennsylvania.

1976 Archaeological applications of computer drawn contour and three dimensional perspective plots. Paper presented to the 41st Annual Meeting of the Society for American Archaeology. St. Louis, Missouri.

1976 The 1554 wrecks of Padre Island: the evidence from the historical documentation. Paper presented to the Fifth Gran Quivera Conference. San Antonio, Texas.

1976 The 1554 wreck (41KN10) off Padre Island. Paper presented to the 1976 Annual Meeting of the Texas Archaeological Society. Houston, Texas.

1977 A shipwreck of the year 1554: Padre Island, Texas. Paper presented to the Eighth International Conference on Underwater Archaeology. Ottawa, Canada.

1978 The *flota* disaster of 1554. Paper presented to the Ninth Conference on Underwater Archaeology. San Antonio, Texas.

1978 Underwater site testing: results of the Texas Antiquities Committee's 1997 field season. Paper

presented to the Ninth Conference on Underwater Archaeology. San Antonio, Texas.

1978 Underwater cultural resource management in the waters of the State of Texas. Paper presented to the Workshop on Cultural Resources Management Policies and Procedures for Shallow Water Historic Shipwreck Sites on the American Inner Continental Shelf, Ninth Conference on Underwater Archaeology. San Antonio, Texas.

1979 An airborne magnetometer survey for shipwrecks and associated underwater test excavations. Paper presented to the Tenth Conference on Underwater Archaeology. Nashville, Tennessee.

1979 The U.S.S. *Hatteras*: a remote sensing data preliminary report by J. Barto Arnold III and Jack C. Hudson. Paper presented to the Tenth Conference on Underwater Archaeology. Nashville, Tennessee.

1980 Underwater cultural resource management: the computerized shipwreck reference file. Paper presented to the Eleventh Conference on Underwater Archaeology. Albuquerque, New Mexico.

1980 Concerning underwater remote sensing surveys, anomalies, and ground truthing. Paper presented to the Eleventh Conference on Underwater Archaeology. Albuquerque, New Mexico.

1981 A marine archaeological magnetometer survey in the Galveston, Texas, area. Paper presented to the Twelfth Conference on Underwater Archaeology. New Orleans, Louisiana.

1981 Rescue archeology in submerged sites. Paper presented to the New World Conference on Rescue Archeology. Quito, Ecuador.

1981 Underwater archeology and maritime preservation. Paper presented to the Second National Maritime Preservation Conference. Baltimore, Maryland.

1982 Platoro Limited, Inc. vs. the unidentified remains of a vessel: U.S. District Court proceedings in a treasure hunting case. Paper presented to the Thirteenth Conference on Underwater Archaeology. Philadelphia, Pennsylvania.

1982 Cultural resource management factors for the Outer Continental Shelf. Paper presented to the Minerals Management Service Information Transfer Meeting. New Orleans, Louisiana.

1983 The Platoro lawsuit revisited. Paper presented to the Fourteenth Conference on Underwater Archaeology. Denver, Colorado.

1984 The Platoro lawsuit: episode III. Paper presented to the Fifteenth Conference on Underwater Archaeology. Williamsburg, Virginia.

1985 The Platoro lawsuit: the final chapter. Paper presented to the Sixteenth Conference on Underwater Archaeology. Boston, Massachusetts.

1986 The Padre Island National Seashore archaeological project of 1985 by Larry V. Nordby and J. Barto Arnold III. Paper presented to the Seventeenth Conference on Underwater Archaeology. Sacramento, California.

1986 Historic shipwreck legislation: development and status. Paper presented to the Fifty-first Annual Meeting of the Society for American Archaeology. New Orleans, Louisiana.

1986 Resolution of unidentified anomalies and related matters. Paper presented to the Seventh Annual Minerals Management Service Gulf of Mexico OCS Region Information Transfer Meeting. New Orleans, Louisiana.

1987 Preliminary report on the Padre Island archaeological survey for 1986 by J. Barto Arnold III and Larry V. Nordby. Paper presented to the 1987 Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Savannah, Georgia.

1988 USS *Monitor* project: preliminary report on 1987 field work by J. Barto Arnold III, J. F. Jenkins, Edward M. Miller, Ernest W. Peterkin, Curtiss E. Peterson, and W. Ken Stewart. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Reno, Nevada.

1989 USS *Monitor* Symposium. Introductory remarks for the symposium and Site definition: intensive surface survey for scattered artifacts. Paper presented to the First Joint Archaeological Congress. Baltimore, Maryland.

1989 The material culture of the 1554 New Spain shipwrecks of Padre Island. Paper presented to the Symposium on Coronado: his trail and his times. Sponsored by the Southwest Center, The University of Arizona. Tucson, Arizona.

1990 The survey for the *Zavala*, a steam warship of the Republic of Texas. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Tucson, Arizona.

1990 Archeology or treasure hunting: a clear ethical choice. Paper presented to the Forty Fourth National Preservation Conference, Charleston. South Carolina.

1991 USS *Monitor*: update on data analysis from the 1987 season. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology.

1991 Multiple choices: exercising curatorial judgment (in the development of the new 1554 shipwreck exhibit at the Corpus Christi Museum) by Elisa Phelps, J. Barto Arnold III, Andy Merrill, and Herman Smith. Paper presented to the Texas Association of Museums Annual Meeting. Corpus Christi, Texas.

1992 Texas shipwrecks: a statistical characterization. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Kingston, Jamaica.

1992 State responses to the abandoned shipwreck act of 1987. Discussion session for State Marine Archaeologists organized by J. Barto Arnold III, presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Kingston, Jamaica.

1993 Matagorda bay surveys: applications of inexpensive satellite navigation. Paper presented to the

Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Kansas City, Missouri.

1993 One cup vision, two tbsp. practicality - regulation recipes. Panel participant. Panel discussion for State Marine Archaeologists, presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Kansas City, Missouri.

1993 How rallying the grass roots helped swing the Shipwreck Act. Paper presented to the 58th Annual Meeting of the Society for American Archaeology. St. Louis, Missouri,

1994 Preliminary mapping of the Caney Creek Wreck: A model of appropriate private sector access to an historic shipwreck. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Vancouver, British Columbia. (Arnold, Roseberry, Landry, Hauser, and Carrell.)

1994 State maritime archaeology workshop III: "A can of worms." Panel participant. Panel discussion for State Marine Archaeologists, presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Vancouver, British Columbia.

1995 USS *Hatteras*: Site monitoring and mapping. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Washington, DC. (Arnold and Anuskiewicz.)

1995 Mapping of the Caney Creek Steamboat Site: A report on the 1993 and 1994 fieldwork. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Washington, DC (Landry, Arnold, Roseberry, Hauser, and Hedrick.)

1995 The professional: Lobbying shipwrecks. Formal presentation in Archaeologists in Action: A Workshop on Lobbying. Paper presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Washington, DC.

1995 The more you roll the less you'll pitch, the more you pitch the less you'll roll: State maritime archaeology managers' workshop. Panel participant. Panel discussion presented to the Society for Historical Archaeology Conference on Historical and Underwater Archaeology. Washington, DC.

08/22/95

AFFIDAVIT OF JOHN W. FOSTER IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA
and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF JOHN W. FOSTER IN SUPPORT
OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue,
Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

I, JOHN W. FOSTER, declare:

I am the Senior Archaeologist in California state service. I supervise archaeology and history programs for the California Department of Parks and recreation. This includes inventory, documentation, test excavations, interpretation and management policy for all terrestrial and underwater sites within the California State Park System. We have a staff of archaeologists and historians and also contract with specialists to perform needed studies throughout the State. My duties include supervising terrestrial and underwater archaeology for the State of California. Since 1983, I have served on the Department's Diving Control Board, which is the governing body for SCUBA diving activities in the State Parks. I am also the liaison to the State Lands Commission with respect to historic shipwrecks and underwater cultural resources.

I have been an avid SCUBA diver since 1979. I hold an advanced NAUI rating with a specialty in Underwater Archaeology and served as the program chair for the 1986 International Conference on Underwater Archaeology in Sacramento, California. I am a recognized specialist in underwater archaeology through Indiana University. I have taught college level courses in underwater archaeology through Indiana University. I have also consulted with the Republic of Mexico and the Dominican Republic in underwater park and shipwreck preservation matters.

I have organized and chaired the only two symposia on underwater archaeology and maritime history ever held at annual meetings of the Society for California Archaeology (1985 and 1995). I have worked for many years with dive clubs, maritime museums, historical groups and archaeological societies to identify, evaluate and conserve shipwreck sites and submerged cultural resources in California. I have regularly assisted law enforcement personnel in protecting submerged cultural sites from vandalism and looting.

Attached hereto as Exhibit "A" is a true and correct copy of my current Curriculum Vitae.

I have worked on a number of shipwrecks throughout California and the Caribbean. These include:

Yankee Blade: (Gold-rush steamer wrecked at Anacapa Island) – assisted the National Park Service in mapping and recording the site. Documented the remain with underwater photos.

Sterling: (Gold-rush vessel sunk in the Sacramento River) – supervised documentation of the vessel. Also assisted in preparing interpretive materials for the public.

LaGrange: (Gold-rush vessel sunk in the Sacramento River) – supervised contract for documentation and artifact recovery from this vessel. This site was to be impacted from waterfront construction within a National Register of Historic Places district.

Pomona: (Steel-hulled passenger steamer sunk in Ft. Ross Cove) – supervised a large, multi-disciplinary project which surveyed the underwater area of Ft. Ross Cove, Sonoma County, California. Six wrecks were located with a magnetometer. The largest and most significant was the *Pomona*.

Lumber Barges and Small Vessels – have supervised the identification, documentation and detailed mapping of two historic lumber barges in Emerald Bay, Lake Tahoe. These have been incorporated into a large underwater park which is the "highest shipwreck park in the world."

Pomo (steam schooner) – assisted the National Park Service in the documentation of this vessel within the Pt. Reyes National Seashore.

Point Arena (steam schooner) – supervised the recovery of a major hull section of this historic vessel lost off Ano Nuevo State Reserve.

Ninus: (Gold-rush bark sunk in the Sacramento River) – assisted in the identification and documentation of this large vessel buried in the mud of the Sacramento River.

Goleta Slough conducted an offshore magnetometer and diving survey at the mouth of the Goleta Slough, Santa Barbara County. Located and recorded prehistoric artifact concentrations offshore.

Winch Hole Site (mid-19th century wreck) – assisted Key Largo National Marine Sanctuary in the documentation of wreckage at this offshore Florida site. Assisted Indiana University in preparing site map and photo documentation of the wreck.

Benwood (WWII vintage freighter) – assisted Indiana University and the Key Largo National Marine Sanctuary staff in documenting this 300' wreck. Prepared underwater video and maps.

Columbus Era Shipwrecks (Bahia Isabela, Dominican Republic) – working through Indiana Uni8versity, assisted in the survey of Bahia Isabela, site of the first settlement in the new world, 1494. Located the remains of at least one Columbus-era vessel with a magnetometer. Negotiated with the government of the Dominican Republic to continue research in 1995. This site is a National Park.

I am familiar with the historic vessel *Brother Jonathan*. I have conducted historical research on this site and discussed its significance with other experts in underwater archaeology. I have reviewed the National Register of Historic Places nomination document and other relevant documentation on file. I have compared the archaeological remains of this site to other Gold-rush ear vessels I have discovered or documented in State of California waters.

I am not personally familiar with the people DSR has hired to conduct recovery operations at the *Brother Jonathan* site. As far as I am aware, neither R2 Underwater Consultants nor James Reedy has ever carried out any archaeological project within the State of California. They have never attended any conference on Underwater Archaeology of California. They seem to be totally

unaware of any standards for this work as recommended by the State Office of Historic Preservation or the State Historic Resources Commission. Mr. Reedy lists no affiliation with any professional historic preservation organization within the State of California. He is one of the "Technicals" referred to in the DSR Preliminary Research Design.

Based on my training and experience as the State Archaeologist of California, and many years experience in dealing with survey and excavation of terrestrial and underwater sites, the proposed plan of archaeological recovery does not meet the expected standards for a modern research design where an excavation is involved by which excavations should be done in California.

In my opinion, if the *Brother Jonathan* is salvaged according to the DSR Recovery Plan, valuable archaeological and historical information will be irretrievably lost on the site. This plan is nothing more than an operational plan to recover objects from the wreck. It does not identify how the site would be documented and provenience control maintained for individual artifacts. It does not specify what artifacts would be collected and disturbed. It does not indicate what archaeological questions would be addressed in this study because the plan calls for nothing more than high tech looting of the *Brother Jonathan*. THIS IS NOT ARCHAEOLOGY. There is no demonstrable public benefit from the project. A few artifacts may be donated to a local museum, but the site will likely be destroyed and with it all the information that could have been learned about the sinking of the vessel and its contraction, modification and use. The state would never permit this gross activity on a terrestrial site containing human remains. The standard should be no difference at a marine burial site.

Specifically, the plan is inadequate in that it does not:

1. contain detailed measures for mapping and documenting the shipwreck site,

2. identify how the wreck will be protected from disturbance when "dusting" or dredging for artifacts,

3. determine what archaeological questions will be addressed in the study,

4. contain any of the core elements in the "Guidelines for Archaeological Research Designs" issued by the State Office of Historic Preservation.

There is no question that the commercial salvage of historic shipwrecks is often in conflict with the principles of archaeology. The two are not, in my opinion, however, inalterably opposed. There is room for commercial venture in the field of nautical archaeology, but under certain very controlled circumstances. A funded expedition to document the site without looting its artifacts could be done by producing a commercial video of the *Brother Jonathan* story and selling the rights to it instead of the artifacts themselves. It is the State's position that this historical wreck belongs to the People of the State of California. Those of us in State Service are temporary stewards of these sites. We must act responsibly to find the best way to conserve the site itself and the information it contains about California's history.

The approach taken by DSR and its consultant will cause permanent damage to the historic shipwreck site and its contents.

In my opinion, the *Brother Jonathan* should not be commercially salvaged unless all the following conditions are met:

1. There is a clear public benefit to the people of California and the United States. This site is highly significant vestige of the California's maritime history. Any agreement leading to the removal of artifacts or features from the site should identify a clear public benefit that will result.

2. The archaeological work should be supervised by a State Archaeologist or state representative familiar with the historic preservation objectives of the State of California. This must be done within the State's maritime archaeology program. This person should have experience in California with underwater projects and must be able to act in the interest of all concerned.

3. A detailed Research Design for the project is approved by the State Historic Preservation Officer and the State Lands Commission.

4. The project is phased so that the conditions for conducting an operation on the site are known before any commitment is made to a recovery that may endanger the integrity of the vessel and its contents. The State should be able to work with an applicant to conduct mapping and documentation of the wreck before any commitment to salvage is made.

5. A performance bond is filed with the State to insure responsible activity by the applicant with respect to protecting this historic vessel. Any damage done to the wreck should result in the forfeiture of the bond and cancellation of a State permit to carry out further operations.

If the above conditions cannot be met, the site should be left intact. Technological improvements in diving and underwater archaeology are being made every year. There is no need to rush to salvage the site unless a

fully professional archaeological project is made an integral part of the overall project. This project should only be carried out, in my opinion, if it can be accomplished at the highest professional standard. The people of the State of California, the owners of the historic *Brother Jonathan*, deserve no less.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 23, 1995, Sacramento, California.

/s/ John W. Foster
JOHN W. FOSTER

EXHIBIT A
TO AFFIDAVIT OF JOHN W. FOSTER

[LOGO] VITA

JOHN WEAVER FOSTER

Supervisor, Cultural Resource Program Unit
Senior State Archaeologist
Resource Management Division
Department of Parks and Recreation
P.O. Box 942896
Sacramento, California 94296-0001 USA
(916) 653-4529
FAX (916) 653-4458

Foothill Archaeological Services
8654 Amber Oaks Court
Fair Oaks, California 95628 USA
(916) 967-6607

BIOGRAPHICAL DATA

Place of Birth: Burbank, California

Date of Birth: September 1, 1946

Marital Status: Married Kathleen Anne Schaffer, August 23, 1969
daughter Lora Michelle, born November 27, 1975
daughter Kathleen Dee, born April 26, 1979

EDUCATION

1964-1967 U.C. Santa Barbara

1965-1966 Los Angeles Harbor College

1967-1969 U.C. Los Angeles
B.A. in Anthropology, March 1969

1970-1973 California State University, Long Beach
M.A. in Anthropology, March 1973

1973-1975 University of Arizona
Graduate Study in Anthropology

Meets SOPA Standards in Archaeology
Meets Federal Government standards in Archaeology

PROFESSIONAL EXPERIENCE

October 1983-present

Senior State Archaeologist, Cultural Heritage Section, California Department of Parks and Recreation, Sacramento. Richard G. Rayburn, Supervisor. Supervision of Statewide cultural resource management activities in the Department. Supervision of interagency programs for technical assistance and

training. Established standards and policies for conduct of archaeology and history for the Department. California State Underwater Archaeologist.

August 1975-October 1983

Associate State Archaeologist, Cultural Resource Management Unit, California Department of Parks and Recreation. Francis A. Riddell, Supervisor. Supervision of Statewide archaeological mitigation programs in State Park System; Supervision of DPR Archaeological Laboratory; Editor, California Archaeological Reports (DPR series); Liason to Native American Advisory Council, Native American Heritage Commission, Underwater Parks Advisory Board, Supervision of Section fiscal and administrative functions; Member, State Park Diving Control Board.

January 1976-present

Partner and Archaeologist, Foothill Archaeological Services, Fair Oaks, California. Professional consulting services in Sacramento, Placer, Mendocino, San Joaquin, Solano, Yolo Yuba, El Dorado and Merced Counties. Services include archaeological site survey and assessment, research and historical analysis, and environmental planning. Over 150 cultural resource management projects completed.

September 1974-July 1975

Archaeologist, National Park Service, Arizona Archaeological Center, Tucson, Arizona. Garland J. Gordon, Supervisor. Review of archaeological for compliance with Federal guidelines and contracts. Field survey for Papago Roads Project, Papago Indian Reservation, Pima County, Arizona. Duties

included field survey, contact with Native Americans and report preparation.

September 1974-June 1975

Assistant Editor, *Ethnohistory,* Dr. Thomas B. Hinton, Editor.

May 1974-June 1975

Instructor in Anthropology, Pima Community College, Tucson, Arizona. Dr. Louise F. Bronson, Division Chairperson. Instructor of introductory level classes in Anthropology, Archaeology and Archaeological Field Methods.

January-August 1973

Field Archaeologist, archaeological Research Inc., Costa Mesa, California. Supervised small crews in survey, excavation, artifact analysis and interpretation in southern California. Duties included client contacts, budgeting, field work and report preparation.

February-June 1972

Teaching Assistant, Department of Anthropology, California State University Long Beach. Duties included grading papers, reviewing reading assignments and assisting lower division students.

October 1971-February 1972

Research Assistant, Department of Anthropology, California State University Long Beach. Franklin Fenenga, Supervisor. Duties included archaeological collections work and report preparation.

July-August 1971

Archaeological Assistant, Excavations at Hidden Reservoir, Madera, California. Franklin Fenenga, Director. Supervised crew of 8 in survey, excavation, analysis and report preparation for CA-Mad-182, 183, 186, 187.

July-August 1968

Assistant Director, Excavations at Ft. Vasquez, Platteville, Colorado. Colorado State Historical Society, Dr. Galen R. Baker, Director. Supervised field crew of 10 in test excavations and artifact analyses.

October-December 1966

Archaeological Assistant, Excavations at the Santa Barbara Presidio. UCSB, Dr. Chris Peebles, Director. Duties included excavating, artifact cataloguing and site mapping.

HONORS AND ACTIVITIES

1970-71 Anthropology Club President, C.S.U.L.B.

1973-75 University of Arizona Graduate Tuition Scholarship.

1979 *Explorer's Club Grant* for Archaeological Survey, Baja California

1982 *Research Grant* for Marine Archaeology – *National Geographic Society*. Cannons from Goleta Beach, California.

1990-92 *Nsf Grant* through the U.S. Man in the Biosphere Program for study and evaluation of the Sierra San Perdo Martir as a Biosphere Reserve (co-Investigator).

1993 Ships of Exploration Research Project at La Isabela, Republica Dominicana. *Indiana University Research Grant.*

1993 *State Research Grant* for Archaeological Assessment of the Sierra Fría, State of Aguascalientes, Mexico.

PUBLICATIONS AND REPORTS

1971 "Adoption Practices of the Creek Indians." Presented at the Annual Spring Meeting of the Southwestern Anthropological Association, Tucson, Arizona.

1972 Preliminary Report on the Archaeology of Ca-Mad-182, 183, 185, and 186. Ms. Department of Anthropology, C.S.U.L.B.

1973 An Eidochronic Analysis of Selected Folktales of the Southeastern Indians. MA Thesis, Department of Anthropology, C.S.U.L.B.

1974 Final Archaeological Report for Clearance Investigations in the Alton Ampitheater [sic] and Skutumpah Terrace Regions of Southern Utah. Ms. Museum of Northern Arizona, Flagstaff.

1975 "Shell Middens, Paleoecology and Prehistory: The Case from Estero Morua, Sonora, Mexico." *The Kiva* 41(2):185-194.

1977 "The Effects of Inundation on the Petersen Site, CA-Eld-210, Folsom Lake, California." National

Park Service, Santa Fe, New Mexico. (Abstracted in *National Reservoir Inundation Study,* NPS, 1981.)

1978 "Archeology in Solution: Testing Inundation's Effects at Folsom Reservoir, California." National park Service, Santa Fe, New Mexico. (Abstracted in *National Reservoir Inundation Study,* NPS, 1981.)

1979 "Ornaments of Two Extinct Marine Pelecypods from the Barrel Springs Site in the Colorado Desert." (with Janice F. Fisher and Joan Oxendine). *Journal of California and Great Basin Anthropology* 1(1):182-188.

1980 "A Late Period Seri Site from Bahia de Los Angeles, Baja California." Presented at the Annual Meeting of the Society for California Archaeology, Redding.

1981 "Diving in Dogholes: The Prospects for Investigating Submerged Cultural Resources in Ft. Ross Cove." Presented at the Annual Meeting of the Society for California Archaeology, Bakersfield.

1982 "Schooners, Steamers and Spilled Cargo: A Preliminary Underwater Survey of Ft. Ross Cove, California." Presented at the International Conference on Underwater Archaeology, Philadelphia.

1982 "Could All the Experts Be wrong?: Observations on the Native Inhabitants and Environs of Nova Albion." Presented at the Annual Meeting of the Society for California Archaeology, Sacramento.

1982 "The Goleta Cannons: Relics from Nova Albion?" Presented to the Santa Cruz County Archaeological Society, Santa Cruz.

1982 "A Description and Tentative Interpretation of the Goleta Cannons." Presented to the State Advisory Board on Underwater Parks and Reserves, Goleta.

1982 "The Baja California to Sonora Connection: A Review of Ideas and Summary of Current Evidence." Presented at the Great Basin Anthropological Conference, Reno, Nevada.

1983 "New Fire from Old Guns: A Description and Tentative Interpretation of Five Iron Cannon from Goleta, California." Presented at the International Conference on Underwater Archaeology, Denver. (Co-author with Jack Hunter and Jim Gilmore).

1983 "A Proposed Underwater Antiquities Act for California." Presented at the Annual Meeting of the Society for California Archaeology, San Diego.

1983 "A Late Period Seri Site from Bahia de Los Angeles, Baja California." *Pacific Coast Archaeological Society Quarterly* 20(1):61-68.

1984 "Schooners, Steamers and Spilled Cargo: A Preliminary Underwater Survey of Ft. Ross Cove, California." In: *Underwater Archaeology: The Proceedings of the 13th Conference on Underwater Archaeology*, Donald H. Keith, editor.

1985 "All Wet in the River City: An Underwater Survey of the Sacramento Riverfront." Presented at the Annual Meeting of the Society for California Archaeology, San Diego.

1986 "The Brig Sterling: A Lost but Not Forgotten Gold-Rush Shipwreck on the Sacramento Waterfront." Presented at the International Conference on Underwater Archaeology, Sacramento.

1987 "Blue Frontiers in California Archaeology." Presented at the Blue Frontiers in Archaeology Symposium, U.C.L.A.

1988 "An Overview of Underwater Archaeology in California: The Bubble Slowly Rising." Presented to the Sacramento Archeological Cooperative, Consumnes River College, Sacramento.

1989 *Archaeology in Solution: Proceedings of the Seventeenth Annual Conference on Underwater Archaeology.* (edited with Sheli O. Smith). Coyote Press, Salinas, California.

1991 "Underwater Archaeology in the State Park System: Current Developments." Presented at State Shipwreck Management Conference, San Pedro, California.

1991 "The Mission San Pedro Martir de Verona: A Brief History and Assessment of Interpretive Potential within a Biosphere Reserve." Presented at the International Conference on the Potential of the Sierra San Pedro Martir as a Biosphere Reserve, Ensenada, Baja California.

1991 "Archaeological Research in the Mountains of the Sierra San Pedro Martir, A Potential Biosphere Reserve." Presented at the Commission of the California Meeting, Cabo San Lucas, Baja California Sur.

1991 "An Initial Archaeological Reconnaissance of La Grulla Meadow in the Sierra San Pedro Martir,

Baja California." Presented at the Commission of the Californias Meeting, Ensenada, Baja, California.

1992 "On the Rim of Chrisendom in the Sierra San Pedro Martir, Baja California." Presented at the Annual Meeting of the Society for California Archaeology, Pasadena.

1993 "Notes on the Surface Archaeology of the Sierra Fría, State of Aguascalientes, Mexico. *Technical Reports on the Establishment of the Sierra Fría as a State Park or Reserve*. State of Aguascalientes, Mexico.

1993 "California State Park System Administrative and Management Policies that may be Applicable to the State of Aguascalientes, Mexico. Report prepared for Lic. Otto Granados Roldan, Governor of the State of Aguascalientes. Co-author with W. James Barry.

1994 "Slakaiya Rock (CA-TRI-1): A Rediscovered Petroglyph Site Near the Eel River, Trinity County, California." Presented at the Annual Meeting of the Society for California Archaeology, Ventura.

1994 "Archaeological Insights within a Marine Cornucopia: Baja California's Bahia de Los Animas" *Pacific Coast Archaeological Society Quarterly* 30(1):1-23. Co-author with Eric W. Ritter, Robert I. Orlins, Louis A Payen and Paul D. Bouey.

1995 "Sucker Management Among the Ajumawi Indians of Shasta County, California." Presented at the Annual Meeting of the California State Park Ranger's Association, Santa Rosa.

1995 "Ajumawi Fish Traps: Harvesting and Managing Suckers in the Springs of the Pit River Drainage." Presented at the Annual Meeting of the Society for California Archaeology, Eureka.

Note: Have also authored over 100 archaeological reports as a private consultant for land use planning work.

RESEARCH INTERESTS

Prehistoric Archaeology of the Far West; Underwater Archaeology and Maritime History; Subsistence and Settlement Systems in California; Seasonality in Hunter-Gatherer Economies; Prehistoric Rock Art; Cultural Resource Management; Cultural Ecology of Coastal Groups; Ethnoarchaeology.

RESEARCH AREAS

California, Baja California, Southwest United States, Northwest Mexico, Caribbean, Southeast United States, Midwest United States.

PROFESSIONAL ASSOCIATIONS

Society for California Archaeology (1972)

Member, Ethics Committee (1972-1978)
Nominations Committee (1978-80)
Legal Affairs Editor (1979-80)
Secretary (1983)
Northern Vice President (1984)

Society for American Archaeology (1975)

Central California Archaeological Foundation (1977)
President (1980-84)

Southwest Mission Research Center (1976)

Society for Historical Archaeology (1980)

California Parks and Conservation Association (1988)
Cultural Resources Conservation Committee
Chair

The Archaeological Conservancy (1989)

PROFESSIONAL SKILLS

Archaeologiacal [sic] Survey and Excavation; Underwater Archaeology; Supervision of Archaeological Projects; Report Editing and Preparation; Liason with Cultural Groups; Archaeological Program Management; Development of Archaeological data Recovery Systems; Underwater Photography and Video Documentation; Cultural Resource Management Training. State and National Park Management. Cultural Resource Programs and Opportunities.

AFFIDAVIT OF DR. JAMES K. ORZECH IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her appurtenances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA and
STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF DR. JAMES K. ORZECH IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN,
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney
General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP,
Chief Counsel
PETER PELKOFER,
Senior Counsel
State Lands Commission
100 Howe Avenue,
Suite 100 South
Sacramento, CA
95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

AFFIDAVIT OF DR. JAMES K. ORZECH

I, JAMES K. ORZECH, declare:

I am and have been the Associate Director of the Ocean Sciences Research Institute (OSRI) in La Jolla, California since 1988. OSRI is a non-profit organization dedicated to research in the oceans including matters related to the preservation of historic shipwrecks. Currently, I am on a one-year assignment at the Naval Historical Center in Washington, D.C., to assist the Director in creating an underwater archaeology program at the Center and in developing a site-management plan for various historic shipwrecks and aircraft.

I am a Captain in the U.S. Naval Reserve having graduated from the U.S. Naval Academy in 1968. I hold a Ph.D. in Oceanography from the Scripps Institution of

Oceanography, University of California, San Diego. My true and complete current professional resume is attached to this declaration.

For most of my active and reserve naval career, I have been involved in diving and salvage including mixed-gas and saturation diving. I have extensive experience in nautical archaeology having participated in a wide variety of projects in California and around the world.

I am familiar with the historic vessel Brother Jonathan based on having read its nomination to the National Register of Historic places. I have read and am familiar with the Preliminary Research Design for the Recovery of Cultural Material from the Steam Vessel Brother Jonathan prepared by R2 Consultants as submitted to the District Court in Support of Deep Sea's opposition to the State's motion for a Stay Order. I have also viewed a videotape of the Brother Jonathan which I understand was prepared by DSR and submitted to the Court is this case. I was provided with this information and a copy of the tape by Attorney Peter Pelkofer.

I am aware of the protective zone established by order of the District Court and that the Brother Jonathan rests within that two mile circle in the Pacific Ocean. I am familiar with the sea conditions and weather patterns at this location in the Pacific by virtue of my extensive operational experience in the Pacific Ocean off California and my studies as an oceanographer.

Based on my training and experience as an oceanographer, as a Captain in the Naval Reserve, as a Navy Diving and Salvage Officer, and as one who has an extensive background in salvage activities, I believe that it very unlikely that anyone could conduct undetected

salvage operations on the Brother Jonathan. It is therefore unrealistic to suggest that the shipwreck is in grave danger of being pillaged by unscrupulous persons. My beliefs are based upon the following:

1. In order to locate the Brother Jonathan with the information available to the public it would require an intensive search operation involving a survey vessel, equipped with precision navigation, side-scan sonar, a remotely operated vehicle (ROV) or submersible as well as all of the associated support and interface technologies plus personnel who are skilled in their operation, integration and interpretation.

2. This expedition would require that the survey vessel spend a matter of days in the target area transiting back and forth in a search pattern locating prospective seafloor features which may or may not prove to be the Brother Jonathan, and then exploring each with the ROV or submersible to attain a positive identification.

3. It would be almost impossible to accomplish such an operation without being observed because of the size of the survey vessel and obvious activity over a period of time.

4. Even if the survey vessel were able to remain undiscovered for several days, its success at this endeavor cannot be assured because of unpredictable factors such as poor weather or sea conditions, equipment malfunctions, operator errors, or any other factor which can go wrong at sea even under ideal weather or sea conditions. Such conditions are unlikely to occur in the target area for any prolonged period of time during most of the year.

5. Assuming that the Brother Jonathan was found and identified by a clandestine group, any salvage must

then be accomplished by using a combination of technical diving and/or a ROV or submersibles, a difficult proposition indeed.

6. The survey vessel, or more likely another ship specially outfitted for technical diving and/or ROV or submersible operations, would have to remain in the target area, probably having to lay a two or three point mooring system plus descending lines for the divers and/or an in-water navigation system for the ROV – a set of very time-consuming and obvious activities.

7. The technical divers would face a most daunting task of descending to a depth of 250 feet breathing a combination of several exotic gas mixtures each provide them at precisely the right time and in exactly the proper sequence, while at the same time fighting currents and keeping warm. Their efforts would be rewarded with only a minimal working time on the bottom (some tens of minutes per diver per day) before having to return to the surface after a lengthy in water decompression time.

8. In this activity as well, success in never assured. A myriad of problems could arise from an equipment malfunction, an error by the diver or the topside crew, or even the slightest miscalculation in a dive profile could cause the failure of the mission or a serious medical problem or even death for the diver.

9. While "innovations" such as diver-propulsion vehicles and better dry suits (which have been available for decades) do assist in diver mobility and comfort, they provide only marginal advantages for deep-water recovery since the basic laws of diving physics and medicine remain the same and are very restrictive in available working time on the bottom and for the degree of effort required to get there.

10. Recent "advances" in technical diving such as the use of "nitrox" or "mixed-gas" diving (which also has been available for decades) do increase the diver's ability to go deeper with somewhat less likelihood of getting "bent" (the classic diving injury caused by expanding bubbles of gas dissolved in the blood under pressure and undisipated by a too rapid return to atmospheric pressure.) Nonetheless, there are still fundamentally the same severe limitations on bottom time available for work. In order to accomplish any significant salvage on an entangled deep-water shipwreck such as the Brother Jonathan, many dives would have to be performed by several skilled technical divers over a period of many day [sic] in good weather – activities sure to attract attention.

I declare under penalty of perjury that the foregoing is true and correct, and this declaration was executed at Washington, D.C. on September 5 , 1995.

/s/ James K. Orzech
JAMES K. ORZECH

James Kenneth (Otto) Orzech, Ph.D.
Captain, U.S. Naval Reserve

Ocean Sciences Research Institute
c/o Naval Historical Center (EH)
Washington Navy Yard, Building #1
901 M. Street, S.E.
Washington, D.C. 20374-5060
(202) 433-4137

Education

1988 Ph.D. in Oceanography, Scripps Institution of Oceanography, University of California, San Diego.

1968 B.S., United States Naval Academy, Annapolis, Maryland.

Ocean Sciences Research Institute

1987-present Associate Director (since founding).

1994-present Advisor to the Director of Naval History on marine technologies related to cultural resources management of historical shipwrecks.

1989-94 Advisor to the President of the Republic of Colombia on management of coastal resources including the (proposed) deep-water archaeological excavation of the Galleon San Jose.

1992-present Founder of the "Historical Climate Research Group" to study the historical causes of severe and/or unusual weather patterns and their effects on coastal resources:

- Briefed disaster-preparedness officials at Naval Base, San Diego, on severe storms and seismic risks in Southern California.

- Evaluated storm damage on Kauai after Hurricane *Iniki*.

1991-present Founder of "Operation Preservation" to document and preserve historical shipwrecks from World War II in the Pacific:

- Coordinator of fund-raising for and production of three commemorative plaques placed on sunken allied warships in Iron Bottom Sound by the Navy/National Geographic Expedition to Guadalcanal in 1992.

1990 Research Scientist on an expedition sponsored by the National Geographic Society and the Soviet Academy of Sciences to study "limnol aggregates" in Lake Baikal, Siberia.

1987 1989 and 1994 Chairman of the "Working Diver sessions" at three ROV/INTERVENTION Meetings sponsored by the Marine Technology Society.

Scripps Institution of Oceanography

1988 Doctoral Dissertation in Bio-Optical Oceanography entitled " 'Marine Snow' as an Emitter of Light in the sea."

1986 Invited participant in a Congressional Office of Technology Assessment panel on "Technologies for Underwater Archaeology and Maritime

Preservation" which was a part of the legislative process for passage of the "abandoned Shipwreck Act of 1987."

1975-85 Certified Member of the Scripps/U.C. San Diego and the University of Southern California Scientific Diving Programs.

1981-84 Established a joint Scripps/U.S. Navy program in pelagic research using Navy ships and deep-diving systems:

- Program included 23 cruises and 49 mixed-gas saturation lock-out dives from *DTV Elk River* and *USS Pigeon*.

- Navy divers collected "marine snow" and performed other scientific tasks at depths as great as 260 m.

1980 Underwater Archaeology Field School, Catalina Marine Science Center, University of Southern California:

- Surveyed and mapped the underwater site for the (proposed) N.O.A.A. habitat.

- Team leader for the underwater archaeological survey of the Palos Verdes "Stone Anchor" Site from 1980 through 1989.

1979-80 Participated in founding Scripps' Program in Marine archaeology:

- Assisted in planning an international conference on the search for signs of early man on the continental shelves.

- Conducted research on inundated sites of early man offshore Southern California developing

methods for predictive modeling based to paleo-geomorphology.

- Completed graduate-level courses in anthropology and archaeology at San Diego State University.
- Represented Scripps at a conference on "The *Monitor:* Its Meaning and Future" held in Raleigh, North Carolina.

1979 OCEANLAB Study Group, Ocean Science Board, National Academy of Sciences.

1978 INDOMED Cruise (leg 10) on board *R/V Melville:*

- Deep Tow geophysical survey of the Eastern Mediterranean Sea.
- Photographed several amphoras and an ancient shipwreck at depths of about 2000 m.

1977 Observer at Serce Liman, Turkey, as a guest of the Institute of Nautical Archaeology (INA).

1977 Evaluator of deep-diving operations on the "*Capistello Ship*" Expedition, the first use of saturation diving in underwater archaeology, at Lipari, Italy, on behalf of INA.

1974-75 Assistant Engineer, Visibility Laboratory.

U.S. Naval Reserve

1993-present Naval Historical Center, Washington, D.C.

- Executive Officer/Operations Officer for the Naval Reserve Unit that represents the director

of Naval History and the Chairman of the Joint Chiefs on contemporary military operations by collecting artifacts, photographs, art and documents for historical archives, and by conducting oral interviews.

- (Interim) Top Secret Clearance based on SBI begun in 1994.

1990-93 Office of the Supervisor of Salvage (SUPSALV), Naval Sea Systems Command (OOC), Washington, D.C., with mobilization assignment as "SUPSALV Pacific."

- Senior Program Officer for six West Coast Reserve Mobile Diving & Salvage Unit (MDSU) Detachments.
- Senior Inspecting Officer on Diving Operational Readiness Assessments (DORA) for reserve MDSU Detachments.
- Advisor to the Commanding General of the Joint Task Force for Full Accounting at USCINPAC on coastal processes affecting the remains of American servicemen lost in shallow water off Tang Island, Cambodia, during the *Mayaguez Incident* of 1975.
- Team Leader for revising all Pacific Fleet Operational Plans (OPLANS) and Time-Phased Force Deployment Data (TPFDD) related to "combat salvage" at CINCPACFLT Headquarters in Pearl Harbor, Hawaii.
- Evaluated the "Oil Spill Response Course for the Antarctic" sponsored by the National Science Foundation, Division of Polar Programs, on behalf of SUPSALV.

- Chairman, "Diver CrossTell '92 Conference," the central forum for addressing reserve diving, salvage, maintenance, training, safety and mobilization issues.
- Commander of "White Forces" (e.g. Principal Architect and Senior Umpire) for "MARDEZPACEK '92," a joint/combined coastal defense and harbor security exercise held at Naval Base, San Diego.
- SUPSALV On-Site Representative for the mishap investigation and recovery of an Air Force C-130 aircraft downed in a lake in North Carolina.
- Assistant Inspector General for the operational evaluation of the Naval Experimental Diving Unit (NEDU), Panama City, Florida.

1988-91 Reserve Staffs of the U.S. Naval Facility, Subic Bay, Republic of the Philippines, and of the Maritime Defense Zone, Pacific, Sector Central California:

- Qualified as a "coastal defense and harbor security officer" and as a "battle-watch captain" during joint/combined exercises.
- Advisor to the Commander, Eleventh Coast Guard District, on new technologies for harbor security, including remote-sensing and mine-countermeasures gear, first deployed in the Gulf War, which might be utilized to stop drug smuggling or terrorism at home.
- Organized a demonstration project utilizing side-scan sonar, precision navigation and a

remotely operated vehicle to locate and investigate mine-like objects in shallow water.

- Completed a special project at OPNAV for the Combat Logistics, Auxiliary, Amphibious and Mine Warfare Division (OP-37).
- Attained basic qualifications in mine warfare.

1980-82 and 1984-88 Commanding Officer, Naval Reserve Mobile Diving & Salvage Unit Detachment, Long Beach, California:

- Co-founder of "Project Sea Mark," a cooperative program between Naval Reserve Mobile Diving & Salvage Units and the National Park Service to document historic shipwrecks in Federal waters.
- Completed the underwater surveys and baseline corrosion and bio-fouling studies of *USS Arizona* and *USS Utah* in Pearl Harbor.
- Completed the underwater survey of the *Kitsugawa Maru* in the War-in-the-Pacific National Historic Park, Apra Harbor, Guam.
- Coordinator of "Project Sea Mark" in Palau for the underwater survey of six World War II-era Japanese shipwrecks.
- Unit won the "Captain Rick Jones Memorial Trophy for Diving Excellence" awarded by the Supervisor of Salvage to the best of fourteen Naval Reserve Mobile Diving & Salvage Units nationally.

1974-77 Executive Officer, Naval Reserve Harbor Clearance Unit ONE, Long Beach, California:

- Navy's factory representative for "Deep Drone," a tethered unmanned submersible, at Ametek-Straza in El Cajon, California.
- Diving Watch Officer during a series of open-sea saturation dives to depths as great as 295 m at Submarine Development Group ONE.

U.S. Navy

1973-74 Officer-in-Charge, Deep-Diving System MK 2 MOD 0 on board the Diver Training Vessel *Elk River,* formerly the SEALAB III platform, at the Submarine Development Group ONE, San Diego:

- Responsible for budget, operations, maintenance and safety.
- Supervised more than 30 open-sea saturation dives for training and/or for hyperbaric research.
- Participated as a diver in three saturation dives.

1973 Naval School of Deep Submergence, San Diego, California, Deep-Submergence Rescue Vehicle (DSRV) Operator's Course.

1972-73 Naval School of Deep-Diving Systems, San Diego, California. Mixed-Gas Saturation-Diving Officer's Course.

1972 Naval School of Diving & Salvage, Washington, D.C. Salvage and Mixed-Gas Diving Officer's Courses.

1970-72 Executive Officer and Navigator, *USS Hitchiti* (ATF-103), Pearl Harbor, Hawaii, during

Northern and Western Pacific deployments, including Vietnam service.

1968-70 Electronics and Communications Officer, *USS Turner Joy* (DD-951), Long Beach, California, during a Western Pacific deployment, including Vietnam service.

Teaching Experience

1984 President, University Toastmaster's Club, U.C. San Diego.

1980-81 Taught "Introduction to Oceanography" at the University of La Verne Extension, Coronado, California.

1977 Teaching Assistant to Professors Willard Bascom and John Isaacs in "Maritime History and Archaeology" at U.C.S.D.

1973-74 Taught "Theory and Practices of Saturation Diving" at the U.S. Naval School of Deep-Diving Systems, San Diego.

Professional Organizations

- Society for Historical Archaeology
- North American Society for Oceanic History
- Marine Technology Society (Diving and ROV Committees)
- American Academy of Underwater Sciences
- American Association for the Advancement of Science

- American Geophysical Union
- Naval Institute

Publications

Orzech, J.K. and R.C. Cassin. 1992. The *Galleon San Jose* Project: Specifications and Recommendations to the Government of Colombia for the Localization and Identification of the Galleon San Jose. *Unpublished Confidential Technical Report.* Ocean Sciences Research Institute, San Diego, California. 162 pp.

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McCaslin, D.E. and J.K. Orzech. 1988. Romancing the Stones: the Worked Stone Objects off the Palos Verdes Peninsula, Los Angeles County, California. In Foster, J.W. and S.O. Smith (eds.). *Archaeology in Solution: The 1986 Proceedings of the Conference on Underwater Archaeology.* Coyote Press, Salinas, California.

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Lapota, D., C. Galt, J.R. Losee, H.D. Huddell, J.K. Orzech and K.H. Nealson. 1988. Observations and measurements of planktonic bioluminescence in and around a milky sea. J. Exp. Mar. Biol. Ecol. *119*:55-81.

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Orzech, J.K. and K.H. Nealson. 1984. Bioluminescence of marine snow: its effect on the optical properties of the sea. In M.A. Blizard (ed.). *Ocean Optics VII.* SPIE: The International Society for Optical Engineering, Bellingham, WA. pp. 100-106.

Trent, J.D. and J.K. Orzech. 1984. The use of a U.S. Navy deep-diving system for marine biological research. In N.C. Flemming (ed.). *Divers,*

Submersibles and Marine Science: Occasional Papers in Biology #9. Memorial University of Newfoundland. pp. 35-44.

Orzech, J.K. 1984. Navy saturation divers collect marine snow for ocean science. Faceplate *15*(3):28-29.

Orzech, J.K. 1983. U.S. Navy saturation diving aids oceanographic research. Sea Technology *24*(12):19-22.

Spiess, F.N. and J.K. Orzech. 1981. Location of ancient amphorae in the deep waters of the eastern Mediterranean Sea by the deep tow vehicle. In Cockrell, W.A. (ed.). *The Proceedings of the Tenth Conference on Underwater Archaeology.* Fathom Eight, San Marino, California. pp. 149-159.

Orzech, J.K. and K.L. Smith 1980. Water column report. In Spiess, F.N. (ed.). *Oceanlab Concept Review.* National Academy of Sciences, Washington, D.C. pp. 28-35.

AFFIDAVIT OF DANIEL J. LENIHAN IN SUPPORT OF APPELLANT'S MOTION TO ENJOIN SALVAGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtenances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA
and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

AFFIDAVIT OF DANIEL J. LENIHAN IN SUPPORT
OF APPELLANT'S MOTION TO ENJOIN SALVAGE

DANIEL E. LUNGREN
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI
Deputy Attorney General
LINUS MASOUREDIS
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-1263
Fax: (510) 286-4020

JACK RUMP
Chief Counsel
PETER PELKOFER
Senior Counsel
State Lands Commission
100 Howe Avenue,
Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

AFFIDAVIT OF DANIEL J. LENIHAN

I, Daniel J. Lenihan declare:

I am chief of the Submerged Cultural Resources Unit of the U.S. National Park Service (NPS).

The NPS is the chief Historic Preservation agency in the Federal Government. I have directed its underwater archeological program for 15 years. For five years prior to that, I directed a major project to determine the impact of reservoir flooding on archeological sites.

In my present capacity, I oversee three underwater archeologists and a team of technicians and support personnel in the conduct of underwater archeological survey, excavation and mapping operations throughout the National Park System and the present and former US trust territories. Our primary focus is New World shipwrecks dating from the 1500s to World War II. My team

also provides primary support to the US Navy and the State Department in cooperative research with other nations regarding US heritage in foreign waters.

I am the US representative to the International Committee on the Underwater Cultural Heritage of ICOMOS, a UNESCO affiliated committee.

I am familiar with the BROTHER JONATHAN through secondary historical sources. I have read and am familiar with its nomination to the National Register. I have also read and am familiar with the Preliminary Research Design prepared by R2 Underwater Consultants. Over the years, I have had informal discussions with maritime historians and archeologist concerning the BROTHER JONATHAN.

I am familiar with James Reedy and other members of the Deep Sea Research group only by reputation.

In my opinion, if the BROTHER JONATHAN is excavated according to DSR's proposed plan, it will comprise a serious disservice to the people of California. I believe the research design to be a proposal for treasure salvage with nods to underwater archeology given to meet the letter of the law and give the false appearance of legitimate research.

It escapes me why one should be comforted in the wreck being recovered immediately by DSR to avoid it being "covertly pillaged by unscrupulous third parties." DSR admits in its own correspondence to the California State Historic Resources Commission that its activities will result in the site no longer being an appropriate candidate for listing in the National Register. This after going to great lengths in their research design about how "non-destructive" their approach will be.

The constant references to "unscrupulous technicals" and "illegal raiders" I presume refers to the citizens of the State of California who engage in technical diving. The salvor's ignorance of such deep diving technologies is apparent in their multiple references to these "technicals" using oxygen rebreathers and nitrox to attain their nefarious ends. It should be noted that such an activity in 250 feet of water would, in fact, be suicidal. Neither of those technologies is compatible with deep diving. One can only surmise that they are thinking of heliox or trimix (helium, oxygen, nitrogen) diving.

I do not personally know the archeologist involved but see nothing in the attached resume which would make me feel comfortable with his serving as an archeologist on this site. The names of the sites he has worked on have been omitted from his references but if they are the WHYDAH and DEBRAAK, as I believe they are, they would serve as a poor reference for prior qualifying experience. These sites are generally recognized in the field of underwater archeology as being classic disasters in both archeology and cultural resources management.

It is my opinion that unless salvage of the BROTHER JONATHAN is supervised by a qualified archeologist under appropriate guidelines such as those provided by the State of California, significant archeological and historical data from the wreck site will be lost.

I declare under penalty of perjury that the foregoing is true and correct. If called as a witness, I could testify competently to the same.

Executed August 28, 1995, at Santa Fe, New Mexico.

/s/ Daniel J. Lenihan
DANIEL J. LENIHAN

AFFIDAVIT OF DANIEL J. LENIHAN

ORDER DENYING MOTION TO ENJOIN SALVAGE AND GRANTING MOTION TO EXPEDITE HEARING

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEEP SEA RESEARCH, INC., Plaintiff-Appellee vs. THE BROTHER JONATHAN, her appurtenances, etc., Defendant, and UNITED STATES OF AMERICA, Defendant-Intervenor, and STATE OF CALIFORNIA, STATE LANDS COMMISSION, Defendant-Intervenor-Appellant.	No. 95-15693 DC# CV-91-3899-LCB Northern California ORDER (Filed Oct. 16, 1995)
COLUMBUS-AMERICA DISCOVERY GROUP, Amicus.	

Before: BEEZER and THOMPSON, Circuit Judges

Appellant State of California's motion for injunction is denied. United States' motion for injunction is denied. Appellee's motion for an extension of time to file a response to the State of California's motion is denied as moot.

Appellee's motion to file an oversized brief is granted. The Clerk shall file appellee's brief received on October 3, 1995. The optional reply brief is due October 30, 1995.

Appellant State of California's motion to expedite is granted. The Clerk shall place this appeal on the next available calendar after completion of briefing.

Joseph Rusconi
OFFICE OF THE ATTORNEY GENERAL
2101 Webster Street
12th Floor
Oakland, CA 94612-3049

INTERVENOR-APPELLANTS' REQUEST FOR JUDICIAL NOTICE AND AFFIDAVIT IN SUPPORT THEREOF

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-15693

DEEP SEA RESEARCH, INC.

Plaintiff-Appellee

vs.

THE BROTHER JONATHAN, her Appurtances, furniture, tackle, cargo, etc.

Defendant,

and

THE STATE OF CALIFORNIA
and STATE LANDS COMMISSION,

Intervenor-Appellants,

UNITED STATES OF AMERICA,

Intervenor.

On Appeal from the United States District Court
Northern District of California, No. CV-91-03899-LCB

INTERVENOR-APPELLANTS' REQUEST
FOR JUDICIAL NOTICE AND
AFFIDAVIT IN SUPPORT THEREOF

DANIEL E. LUNGREN
Attorney General of the
State of California
JAN S. STEVENS
Assistant Attorney General
JOSEPH C. RUSCONI,
SBN 78814
LINUS MASOUREDIS,
SBN 77322
Deputy Attorney General
2101 Webster Street,
12th Floor
Oakland, CA 94612-3049
Telephone: (510) 286-4142
Fax: (510) 286-4020

JACK RUMP,
Chief Counsel
PETER PELKOFER,
Senior Counsel
State Lands Commission
100 Howe Avenue
Suite 100 South
Sacramento, CA 95825-8202

Attorneys for Intervenor-Appellants,
the State of California and the State Lands Commission

Intervenor-Appellants State of California and State Lands Commission hereby request that this court take judicial notice pursuant to Federal Rules of Evidence 201(b) and 201(d) of the following:

> 1. That on October 12, 1995, THE BROTHER JONATHAN was determined to be eligible for inclusion in the National Register of Historic Places pursuant to 43 U.S.C. section 21054(a)(3).
>
> This fact is proved by the letter dated November 1, 1995, from Carol D. Shull, Keeper of the National Register of Historic Places, to Joseph C. Rusconi, Deputy Attorney General, a true and correct copy of which is attached to the occupying [sic] affidavit of Joseph C. Rusconi.

2. That title to THE BROTHER JONATHAN has been transferred from the United States of American to the State of California pursuant to the Abandoned Shipwreck Act, 43 U.S.C. section 2105.

This fact is proved by the letter dated November 1, 1995, from Carol D. Shull, Keeper of the National Register of Historic Places to Joseph C. Rusconi, Deputy Attorney General, a true and correct copy of which is attached to the occupying [sic] affidavit of Joseph C. Rusconi and by the stipulation between the State of California and Deep Sea Research, Inc., that THE BROTHER JONATHAN rests on the submerged lands of the State of California found at Excerpt of Record, pages 113-114.

The United States asserts title to abandoned shipwrecks that are on the submerged lands of a state and that are included, or are determined to be eligible for inclusion, in the National Register of Historic Places. 43 U.S.C. section 2105(a)(3). The United States has transferred its ownership of these vessels to the State. 43 U.S.C. section 2105(c).

Courts have taken judicial notice of the official acts of government officials and government publications in situations such as trademark registrations, *Metro. Pub., Ltd. v. San Jose Mercury News*, 987 F.2d 637, 641, n. 3 (9th Cir. 1993); letters of patent, *Aqua Queen Mfg., Inc. v. Charter Oak Fire Ins.*, 830 F.Supp. 536, 537-538 (C.D. Cal. 1993); and the contents of U.S. government publication on storage of cargo in marine containers, *Austracan (U.S.A.) Inc. v. Neptune Orient Line Ltd.*, 612 F.Supp. 578, 585 (C.D.N.Y. 1985).

Judicial notice may be taken of qualifying materials at any stage of the proceeding. Federal Rule of Evidence 201(f). This court has taken judicial notice during the pendency of an appeal of such matters as the figures in official reports, *Sinaloa Lake Dwners Assn. v. City of Simi Valley*, 882 F.2d 1398, 1403 (9th Cir. 1989), and of the contents of newly enacted legislation, *Sierra Club v. Callaway*, 499 F.2d 982, 989-990 (9th Cir. 1974). The official act of the Keeper of the National Register of Historic Places in declaring THE BROTHER JONATHAN eligible for inclusion in the National Register of Historic Places cannot reasonably be questioned and is a proper subject for judicial notice.

Dated: November 21, 1995

Respectfully submitted,

DANIEL E. LUNGREN, Attorney
General of the State of California

JAN S. STEVENS
Assistant Attorney General

LINUS MASOUREDIS
JOSEPH C. RUSCONI
Deputy Attorneys General

JACK RUMP, Chief Counsel
PETER PELKOFER, Senior
Counsel
State Lands Commission

/s/ Joseph C. Rusconi
JOSEPH C. RUSCONI

Counsel for the State
of California and the State
Lands Commission

I, Joseph C. Rusconi, declare:

1. That I am one of the Attorneys of record in this case.

2. That the attached letter dated November 1, 1995, from Carol D. Shull, Keeper of the National Register of Historic Places, to me is a true and correct copy of the original which was received in my office on November 6, 1996, in the ordinary course of business. The original remains on file with my office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of November 1995, at Oakland, California.

/s/ Joseph C. Rusconi
JOSEPH C. RUSCONI
Declarant

United States Department of the Interior
(SEAL) (LOGO)
NATIONAL PARK SERVICE
P.O. Box 37127
Washington, D.C. 20013-7127

IN REPLY REFER TO:
H32(2280)

NOV 1 1995

Mr. Joseph C. Rusconi
Deputy Attorney General
State of California
Department of Justice
2101 Webster Street, 12th Floor
Oakland, CA 94612

Dear Mr. Rusconi:

This letter is to inform you that THE BROTHER JONATHAN shipwreck site, Del Norte County, California was determined eligible for listing in the National Register of Historic Places on October 12, 1995.

The ownership of THE BROTHER JONATHAN is currentiy under contention between the State of California (State Lands Commission) and Deep Sea Research, Inc., a treasure salvor. As a result, the nomination submitted by Ms. Cherilyn Widell, California State Historic Preservation Officer was treated as a request for a determination of eligibility. At such time as the ownership of the property is formerly resolved, the National Park Service may reevaluate the nomination to determine whether or not the site should be formally listed in the National Register.

The decision to determine THE BROTHER JOHNATHAN [sic] eligible for listing was based solely on the merits of the property as outlined in the nomination materials.

If you have any additional questions or comments, please feel free to contact Paul R. Lusignan of the National Register staff at (202) 343-1628.

Sincerely,

/s/ Carol D. Shull
Carol D. Shull
Keeper of the National Register of Historic Places
National Register, History and Education

cc: CA SHPO

Fletcher C. Alford, Esq.
Attorney for Deep Sea Research Inc.

Peter Pelkofer, Esq.
California State Lands Commission

PORTIONS OF THE ABANDONED SHIPWRECK ACT GUIDELINES, 55 FED. REG. 50116 ET. SEQ.

Federal Register / Vol. 55, NO. 233 /
Tues., Dec. 4, 1990 / Notices

* * *

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Embedded as defined in the Act means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof. Tools of excavation would include, but not be limited to hydraulic, pneumatic, or mechanical dredges; explosives; propeller wash deflectors; air lifts; blowtorches; induction equipment; chemicals; and mechanical tools used to remove or displace bottom sediments or coralline formations to gain access to shipwrecks.

* * *

PAGE 50130

Guideline 1: Prepare an archeological assessment for the survey area. Prior to conducting the field survey, underwater archeologists and maritime historians should assess the potential for and predict the locations of shipwrecks that may be present in the area to be surveyed.

(a) Assessments should be based on available primary and secondary sources about shipwrecks as well as wrecked vessels that were salvaged or refloated. Information about the presence of shipwrecks should be solicited from sport divers, dive clubs, charter boat operators, commercial salvors, fishermen, marine surveyors, local

residents, and other knowledgeable individuals. Records of the U.S. Coast Guard and the U.S. Army Corps of Engineers should be examined for evidence of abandoned shipwrecks. Annual reports and records of the U.S. Army Corps of Engineers on ports, harbors, and waterways should be examined for evidence of prior dredging, filling and channel modification that may have damaged or destroyed shipwrecks. Reports (prepared for the Minerals Management Service. U.S. Department of the Interior) about the potential for shipwrecks and other historic properties on the outer continental shelf also should be examined.

(b) Assessments should identify navigational hazards (such as submerged outcrops), climatological factors (such as hurricanes) and historical events (such as naval engagements) that may have caused vessels to founder or wreck. Where individual shipwreck sites are known or suspected, the assessment should summarize the vessel's structural features, the wreck incident, any salvage operation, and any prior archeological surveys or excavations. The approximate or known, verified location of the shipwreck should be plotted on nautical charts to determine areas that should be surveyed.

Guideline 2: Prioritize surveys. Initially, surveys should be focused primarily in areas where shipwrecks are known or expected to be found. In addition, priority should be given to areas subject to high visitor use, dredging, dumping, trawling, development, natural degradation, siltation, and other activities that may damage shipwrecks or make them inaccessible. Once these areas are surveyed, future survey work should be focused in areas known to have been used during periods of exploration and colonization, but where there is little historical documentation about shipwrecks. When the

archeological assessment indicates that no shipwrecks are known or expected to have occurred in a given area, the area should be assigned a low priority for survey until new information indicates otherwise.

* * *

PAGES 50133-50134

Guideline 2: Authorize only those recovery activities at State-owned shipwrecks that are in the public interest. Decisions to allow for the recovery of State-owned shipwrecks should be reached on a case by case basis by weighing and balancing the values and uses a particular shipwreck may have the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects to be caused by the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector recovery activity is in the best interests of the public the State should consider the following:

(a) Is the subject shipwreck, in fact, State-owned? (The States cannot authorize public or private sector recovery at any shipwreck that is federally-owned, privately-owned, or entitled to sovereign immunity, even though such shipwrecks may lie in State waters.)

(b) What are the shipwreck's current and potential future values and uses? Is the proposed recovery consistent with those values and uses? Will the proposed recovery enhance any of those values and uses? Will it irrevocably damage or destroy any of those values and uses?

(c) Is the shipwreck listed in or determined eligible for inclusion in the National Register of Historic Places? Is it a National Historic Landmark?

(d) Where the shipwreck may be historic, will be [sic] the proposed recovery result in a nomination to the Secretary of the Interior to list the shipwreck in the National Register of Historic Places? Will it result in a recommendation to the Secretary of the Interior to designate the shipwreck as National Historic Landmark?

(e) Where the shipwreck is (or may be) historic:

(1) Have the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) been provided with an opportunity to comment on the proposed recovery? Do they approve of the proposal? Have they attached any terms and conditions to ensure that preservation of the shipwreck's historical information?

(2) Is the proposed recovery consistent with the State's comprehensive historic preservation plan?

(3) Will the proposed recovery result in the acquisition of new historical information or verify historical documentation?

(4) Will the proposed recovery be conducted in a professional manner to preserve the shipwreck's historical information? (See Guideline No. 4 in this subpart for a discussion on conducting recovery activities in a professional manner.)

(5) Will the proposed recovery result in the private ownership or sale of any of the artifacts and other materials recovered? If so, will those items be properly conserved and studied and be made available for public exhibition and interpretation?

(f) Is the shipwreck located in a State underwater park or preserve? If so, is the proposed recovery consistent with the unit's management plans?

(g) Is the shipwreck located in or on a State's submerged lands located within a unit of the national park system, the national wildlife refuge system, the national forest system, or the national marine sanctuary system? If so, is the proposed recovery consistent with the unit's management plans, the written agreement between the State and the Federal land manager, and applicable Federal statutes, regulations, policies, and standards?

(h) Is the shipwreck located in any other area (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation? If so, is the proposed recovery consistent with the area's management plans and applicable statutes, orders and regulations?

(i) Is the shipwreck currently being damaged or destroyed by natural processes (such as erosion), by an approved State or Federal undertaking (such as dredging or development) or by other human activity (such as anchor damage)? Is it threatened with imminent and unavoidable damage or destruction by such processes, undertakings or activities?

(j) Where the proposed recovery will damage or destroy the environment surrounding the shipwreck, will the area be restored to its original condition?

(k) Will the proposed recovery impede navigation in existing Federal navigation channels?

(l) Has the applicant obtained other necessary State or Federal permits (such as permits to disturb the bottomlands)?

Guideline 3: Protect particular State-owned shipwrecks from commercial salvage, treasure hunting and private collecting activities. Commercial salvage, treasure hunting and personal collecting activities, no matter how they are conditioned and monitored by the State, are conducted for the personal gain of individuals. Shipwrecks that are particularly significant historically or are in protected areas set aside by some formal mechanism should be preserved for the public and generally not be available for commercial salvage, treasure hunting or personal collecting. It is recommended that, at a minimum, any State-owned shipwreck that meets any of the following criteria should not be available for commercial salvage, treasure hunting or personal collecting:

(a) Shipwrecks designated as National Historic Landmarks or pending a written determination by the Secretary of the Interior, shipwrecks under consideration for designation as National Historic Landmarks:

(b) Shipwrecks located in State underwater parks or preserves:

(c) Shipwrecks located in or on a State's submerged lands located within units of the national park system, the national wildlife refuge system, the national forest system, or the national marine sanctuary system: or

(d) Shipwrecks located in other areas (like habitat areas or coralline formation) protected under Federal or State statute, order or regulation.

* * *